

ORIGINAL

SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA

2010 JAN 13 AM 11:00

JEANNE HICKS, CLERK

By: S Smisko

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

THE STATE OF ARIZONA,

Plaintiff,

vs.

STEVEN CARROLL DEMOCKER,

Defendant.

9300
No. CR 2008-1339

BEFORE: THE HONORABLE THOMAS B. LINDBERG
JUDGE OF THE SUPERIOR COURT
DIVISION SIX
YAVAPAI COUNTY, ARIZONA

PRESCOTT, ARIZONA
WEDNESDAY, NOVEMBER 18, 2009
8:59 A.M.

REPORTER'S TRANSCRIPT OF PROCEEDINGS
FRANKS HEARING

TESTIMONY OF DEPUTY DOUG BROWN

ROXANNE E. TARN, CR
Certified Court Reporter
Certificate No. 50808

NOVEMBER 18, 2009
8:59 A.M.

FRANKS HEARING

APPEARANCES:

FOR THE STATE, MR. JOE BUTNER.

FOR THE DEFENDANT, MR. JOHN SEARS, MR. LARRY
HAMMOND, AND MS. ANN CHAPMAN.

THE COURT: This is continuing in the State
versus DeMocker, CR 2008-1339. Mr. DeMocker is present and
in custody, with John Sears and Larry Hammond representing
him. Joe Butner is here from the County Attorney's office,
representing the State.

The next matter on our agenda was motion
to suppress a Franks hearing.

Defense ready to proceed?

MR. SEARS: Yes, Your Honor.

THE COURT: State ready?

MR. BUTNER: Ready, Your Honor.

THE COURT: Mr. Sears, I think the burden of
going forward is with you.

MR. SEARS: Your Honor, I think our motion,
particularly as responded to by the State, makes that a prima
facie case, that we shift the burden, under Rule 16.2(B), to
the State. The prima facie case, of course, is just a burden
of persuasion that tells us if the facts in the motion are
assumed to be true, the propositions they assert follow as

1 true.

2 My experience in motions such as this is that
3 unless the State seriously controverts the question of
4 whether the defendant has raised a prima facie case, that the
5 State typically proceeds. I can put on evidence, if the
6 Court finds that the motion does not, on its face, establish
7 a prima facie case. I am prepared to do that.

8 THE COURT: Mr. Butner?

9 MR. BUTNER: Judge, as you might expect, I
10 disagree, and our response indicates as much. I don't think
11 that they have met that burden. I don't think that they have
12 put on a prima facie case, that the warrant wasn't proper,
13 and that the seizures weren't proper.

14 THE COURT: Anything else, Mr. Sears?

15 MR. SEARS: Your Honor, on the face of the
16 warrant, which I attached, is the affidavit. I have pointed
17 out specifically the absence of any assertions by the
18 affiant, Detective Brown at the time, with respect to, for
19 example, his belief that there is probable cause to believe
20 that evidence of the crime alleged in the warrant can be
21 found in books, papers, journals, computers, electronic media
22 storage device. I think just on that alone we have met our
23 burden to establish a prima facie case, and the burden shifts
24 to the defense.

25 If the Court wants to hear more, we can

1 present more.

2 THE COURT: Is this something that requires
3 evidence, or are you making simply a legal argument?

4 MR. SEARS: I was expecting, frankly, the
5 affiant to be present to testify, and I have provided the
6 State with transcripts of the interview of my client, his
7 daughter Charlott and her then boyfriend Jacob Jenesak that
8 night, which are virtually the entire basis for the
9 assertions in the affidavit, and my intention was to
10 cross-examine Detective Brown from that record.

11 If he is not here and the State doesn't
12 intend to call him, I can put on Mr. Robertson, who is
13 intimately familiar with that. And we have on his laptop the
14 transcripts, and we can go through line by line and point the
15 Court to what Jacob and Charlott and Mr. DeMocker actually
16 told the police that night and compare and contrast that with
17 what is in the affidavit, as part of our Franks presentation.
18 I am perfectly willing to do that.

19 I do think we need to have that record
20 made. It wouldn't take all that long to do.

21 THE COURT: Well, certainly, as far as the
22 Franks part is concerned, I will let you go ahead and do
23 that.

24 Mr. Butner?

25 MR. BUTNER: Judge, if I understand what

1 Mr. Sears is saying now, he is saying that the warrant was
2 insufficient -- that the affidavit was insufficient to
3 justify the warrant. I don't think that that's the case. He
4 is talking about -- he's mentioned in his motion that there
5 wasn't sufficient facts set forth to justify a search of the
6 residence, the office, the automobile, personal and business
7 computers. Quite frankly, the facts set forth in the
8 affidavit are sufficient to justify those searches.

9 Mr. DeMocker told the officers that he
10 left from the residence and returned to the residence, he
11 took a shower there, he washed clothing there, he left
12 clothing still in the washing machine. He had scratches on
13 him, indicative of a possible struggle, and his clothing was
14 still there at the residence. The search was for that
15 clothing, of course, and trace evidence.

16 And also, they were aware -- and it is
17 set forth in the affidavit -- that they just completed a
18 lengthy divorce, and there was a recent disbursal of \$190,000
19 from a 401-K, or 190 plus. And those facts demonstrate, in
20 the affidavit, that there is justification to search the
21 residence.

22 Mr. DeMocker told them that he went back
23 to his office to shut off his computer. That computer could
24 have held financial evidence that could have provided motive
25 for this homicide, and that is, of course, hidden evidence

1 that justified a search of that office and that computer that
2 was hidden there.

3 Possibly could have been hidden evidence
4 at the residence in the form of clothing and trace evidence
5 and financial evidence and communication between the victim
6 and Mr. DeMocker.

7 The automobile, he indicated that he used
8 the automobile as a means of transportation out to the
9 Williamson Valley area, where the homicide occurred, in fact,
10 in the Williamson Valley area. The automobile could have
11 contained trace evidence. Also could have contained tracking
12 evidence. All of that stuff was mention in the warrant, in
13 the affidavit.

14 In terms of the personal and business
15 computers that were searched -- this was a lengthy divorce,
16 as I've described, and he had gone back to turn off the
17 office computer. And, of course, the divorce was recently
18 finalized in May of 2008. That was set forth in the
19 affidavit. Those computers could have contained financial
20 evidence and communication. The warrant asked to search
21 those things as a result of those kinds of natural
22 conclusions.

23 Judge, there is clearly sufficient facts
24 set forth in that affidavit to make all of the searches that
25 were done pursuant to the lawfully issued warrant.

1 THE COURT: There are two issues, as I see
2 them. One, it seems to me is basically the legal argument
3 that you are referring to. Defense has also made some
4 allegations that there were falsehoods in the warrant. So
5 there is the Franks aspect, as well. I think that is what
6 Mr. Sears is talking about proceeding. So I will let you go
7 ahead and make your record regarding that.

8 MR. SEARS: Your Honor, could I inquire
9 whether the State ever intended to have Deputy Brown here
10 today?

11 THE COURT: You may inquire.

12 MR. BUTNER: I don't want to answer that.

13 MR. SEARS: Well, the reason being, Your
14 Honor, is that, in my experience, to conduct a Franks
15 hearing, I think the Court needs to hear not only the
16 allegations from the defense about specific statements that
17 are either in the affidavit, within the four corners of the
18 affidavit, or statements that are material that are omitted.
19 But the person that can offer more information to the Court
20 about what they knew and when they knew it would be the
21 affiant.

22 And again, because I think we've gotten
23 to a point where the burden has shifted to the State to go
24 forward on that --

25 THE COURT: I disagree with you on that part.

1 I think you have an obligation to subpoena your witnesses.
2 That would include the officer, if you intend to put on his
3 testimony.

4 MR. SEARS: My experience, Your Honor, has
5 been I have never had to subpoena a police officer in a
6 suppression hearing, that I can remember in this county. I
7 can't remember having to do that, because the State -- or my
8 expectation of the State would understand that it is a very
9 low threshold to shift the burden to them when you are
10 seeking to suppress evidence seized by warrant, and that
11 typically the allegations in the motion carry the day on that
12 and the State proceeds first. I can --

13 THE COURT: That is true of a typical search
14 warrant or a non-search warrant setting. It is not true in a
15 setting where there has been issued a search warrant, and it
16 is not true in a Franks hearing.

17 I think the proponent of the issue that
18 there was a false statement included in the affidavit has the
19 burden, first of all, of establishing the preponderance of
20 the evidence, shows that a false statement was made, and it
21 was made knowingly, intelligently, and with reckless
22 disregard for the truth or falsity of the statement. I don't
23 lack some background, in terms of what the evidence is,
24 because we've had the Simpson hearing. We have had a good
25 portion of the Chronis hearing. Detective Brown, I think,

1 has testified on both of those, if I recall right.

2 If you need me to take a break, I will take a
3 break, if you want to try to secure Detective Brown's
4 presence.

5 MR. SEARS: Since we are here and ready to go,
6 I would prefer to go forward with Mr. Robertson, to go
7 through the affidavit and match it up to the transcripts. At
8 this point, Your Honor, I have offered transcripts of, as I
9 said, the interviews of Mr. DeMocker, Charlott DeMocker, and
10 Jacob Jenesak, from July 3rd, 2008, and then an additional
11 copy of the affidavit per search warrant, the search warrant
12 itself, and the return on the search warrant. And at this
13 point I would move all six of those exhibits. I provided
14 copies, again, to the State.

15 THE COURT: Do you have numbers on them?

16 THE CLERK: 144 through 149.

17 THE COURT: 144 through 149.

18 Mr. Butner your position?

19 MR. BUTNER: Let me just see if I understand.
20 I just got these this morning, Judge.

21 MR. SEARS: I would tell the Court that they
22 are the same -- of course, the same exhibits that I attached
23 to my motion. They are Bates numbered, so they came from the
24 State.

25 MR. BUTNER: In other words, this is the

1 affidavit for the first search warrant, the first search
2 warrant itself, and the return of that first search warrant?

3 MR. SEARS: That's correct.

4 MR. BUTNER: No objection to those, Your
5 Honor. And I don't know what numbers those three things are,
6 but --

7 THE COURT: Those are 147, 148, and 149,
8 Mr. Sears?

9 They appear to be -- the affidavit is
10 Exhibit 149. The search warrant is 148. The return is 147.
11 Those exhibits are admitted for the purposes of this hearing.

12 MR. BUTNER: Judge, in regard to the other --
13 the transcripts of interviews, these are not the same
14 transcripts that the State provided the defense. And I just
15 got these minutes ago. I haven't had an opportunity to go
16 through them, and so I would object to them, because I don't
17 know for sure that they are accurate -- or at least accurate
18 in terms of by comparison with the State's transcripts. I
19 would like an opportunity to review them.

20 THE COURT: Do you want to take a break to do
21 that, or do you want to proceed into the testimony and -- at
22 this point, I don't have any foundation for them.

23 MR. SEARS: I think Mr. Robertson can lay a
24 foundation for these, because he's also listened to the tape
25 recordings, which, of course, were the best evidence of these

1 conversations.

2 MR. BUTNER: True.

3 MR. SEARS: And we thought it would be simpler
4 and more efficient to proceed with transcripts.

5 MR. BUTNER: And I certainly understand why
6 you would want to do that.

7 If you could give us a few minutes to go
8 through these, Judge, it might be able to eliminate any
9 problems that way.

10 MR. SEARS: Your Honor, maybe we can see where
11 Deputy Brown went.

12 THE COURT: You may. We'll take, what, ten,
13 15?

14 MR. BUTNER: That would be fine.

15 THE COURT: 15 minutes would put us at 25 to
16 10:00. Recess until then.

17 (Brief recess.)

18 THE COURT: Same parties are still present as
19 I announced before.

20 My bailiff advises that it is going to
21 take too long to go through all of the documentation, so we
22 are ready to proceed.

23 MR. SEARS: Your Honor, I intend to call
24 Deputy Brown now, but I still think it would be useful and
25 efficient to have some transcript to use with him as he goes

1 through this. I still think that 144, 145, and 146 are
2 appropriate for that, largely because they are ours, and they
3 are searchable. The format in which we've obtained them
4 allows us to search here by words and phrases, to find
5 references, which is a quick and easy way to do that.

6 The transcripts have been disclosed to us
7 in the 14,000 range, and the Bates number are pdf files and
8 not searchable files. I can lay a foundation for
9 Mr. Robertson, if the Court wants to hear about how these --
10 Mr. Robertson's looked at the other transcripts. He listened
11 to the tape.

12 THE COURT: Why don't we do it in that way.

13 MR. SEARS: If Mr. Butner still has a
14 continuing objection to 144 and 145 -- and I have one other
15 suggestion, Your Honor. To the extent that the State wants
16 the Court to consider the transcripts that it has prepared
17 and disclosed to us, we wouldn't object to having those
18 copied over the noon hour or something and made part of the
19 record.

20 As we go through them, there aren't
21 hundreds of references that I intent to point to. There are
22 some. And I think the State could find them in their own
23 transcripts and would be able to see that our transcripts are
24 going to track what they --

25 THE COURT: Mr. Butner?

1 MR. BUTNER: Judge, you know, the transcripts
2 are substantially the same, obviously, because they came from
3 the same recording. And I am sure the defense didn't try to
4 transcribe it any differently than the State did, but we
5 did -- most of these transcripts we provided very early on --
6 I mean, Bates number 1700 through 2000, approximately.

7 We certainly don't have any objection to
8 him using those transcripts, and I guess -- I mean, you know,
9 with foundation laid by Mr. Robertson, I am sure he can use
10 his own transcripts, too. And I guess we'll just have to
11 have dueling transcripts, in the event that they differ
12 somehow.

13 The problem, quite frankly, I will just
14 point out, Detective Brown, at the time he interviewed
15 Mr. DeMocker, was very careful about when he ended one
16 section of the interview, he called it a number. For
17 example, one, and then two, and then three. And so our
18 transcripts go one, and then two, and then three, and so on.

19 Whereas the transcripts from the defense
20 are just in kind of an on-going transcript, and so we
21 can't -- you know, we're trying to go back and forth and
22 figure out where things are in their transcripts. It is kind
23 of difficult that way.

24 THE COURT: But yours are kind of laid out in
25 chapters, so to speak?

1 MR. BUTNER: Yeah, they really are. It is
2 kind of weird, but they are laid out in chapters, just as the
3 way that the interview progressed.

4 MR. SEARS: And Your Honor, maybe rather than
5 having Mr. Robertson, I could make an offer of proof of what
6 Mr. Robertson would say here. But I can say -- for example,
7 here is, on Page 4 of our transcript, "recording concludes,"
8 and then we have a header on Page 5 showing that this is the
9 next interview here, and it is called "Steven DeMocker 2", on
10 the bottom --

11 THE COURT: So you have chapters, sort of --

12 MR. BUTNER: That helps me, Judge, and I was
13 kind of scrambling here at the break, looking to coordinate
14 these things -- or correlate them.

15 THE COURT: Do you each have copies of the
16 offered exhibit?

17 MR. SEARS: Yes.

18 MR. BUTNER: Yes.

19 THE COURT: And Detective Brown has a copy, as
20 well, or are we going to use the one that is marked?

21 MR. SEARS: I was going to use the one that is
22 marked. And if you would like to follow along, Your Honor,
23 you can have this set, and we will work off our laptop here.

24 THE COURT: Please. That would probably be
25 helpful.

1 MR. SEARS: And one other thing. Looking at
2 this, we've got the transcripts of -- just so the record is
3 clear here -- the transcript of Steve DeMocker, various
4 interviews, the six of them early on. But we just got the
5 transcripts of Jacob and Charlott's in the 39th supplemental
6 disclosure, which was within the last two weeks.

7 THE COURT: I guess I am uncertain as to
8 whether you want to show a continuing objection to this,
9 Mr. Butner, or do you want to --

10 MR. BUTNER: No, Judge, I don't think I do. I
11 don't want to be obstructionistic in this situation.

12 But Detective Brown, he was present at
13 these interviews. He has his copies of the transcripts that
14 we have disclosed, and of course, that is what he has
15 reviewed to prepare to testify. And if it would be all right
16 if he took those with him to the stand so that he could, if
17 necessary, refresh his recollection, that would certainly
18 help.

19 THE COURT: Do you have a problem with that,
20 Mr. Sears?

21 MR. SEARS: No. Just so the record is clear,
22 I intend to proceed -- I've still moved 144, 145, and 146 for
23 purposes of this hearing --

24 THE COURT: And there being no objection,
25 those are admitted.

1 MR. SEARS: Thank you, Your Honor. And that
2 is what the Court has now, Mr. Butner has, Deputy Brown is
3 going to have, and we have. So that would be my baseline.
4 To the extent that he remembers something differently and
5 wants to take a minute to look at his transcript to see if
6 it's the same, that's fine.

7 THE COURT: That sounds fair.

8 MR. BUTNER: Good. Thank you.

9 THE COURT: Are you calling Detective Brown?

10 MR. SEARS: Yes, sir.

11 THE COURT: Detective Brown, you will be sworn
12 in.

13 THE CLERK: Do you solemnly swear upon the
14 penalty of perjury that the testimony you are about to give
15 will be the truth, the whole truth, and nothing but the
16 truth, so help you God?

17 THE WITNESS: I do.

18 THE COURT: You may proceed.

19 MR. SEARS: Thank you.

20 DOUG BROWN,
21 called as a witness, having been duly sworn, testified as
22 follows:

23 DIRECT EXAMINATION

24 BY MR. SEARS:

25 Q. Good morning, Deputy.

1 A. Good morning, sir.

2 Q. Let's see if we can set the stage a little bit for
3 today's hearing, Deputy. I am going to take you back to the
4 evening of July 2nd and the early morning hours of July 3rd,
5 of 2008, and talk with you for a bit about what you did and
6 how you did some of the things you are going to tell us about
7 that day.

8 You told us in other hearings that you
9 arrived at the Bridle Path scene in Williamson Valley
10 sometime in the late evening of July 2nd, 2008; is that
11 right?

12 A. That's correct.

13 Q. And that you had been designated as the case agent
14 at some point that evening; is that right?

15 A. That's correct.

16 Q. And you were, if I understand the sequence of
17 events, the first law enforcement person to have contact with
18 Mr. DeMocker -- Steven DeMocker that night; is that correct?

19 A. That's correct.

20 Q. And that was when you were giving Charlott
21 DeMocker her cell phone that she had dropped, and
22 Mr. DeMocker was on the other end of that phone; is that
23 right?

24 A. That's correct.

25 Q. And as a result of that conversation, Mr. DeMocker

1 came out from his residence out to the Bridle Path scene; is
2 that right?

3 A. That's correct.

4 Q. And you spoke with him again when he was out at
5 the Bridle Path scene; is that right?

6 A. That's correct.

7 Q. And then arrangements were made for Mr. DeMocker
8 and his daughter Charlott and her friend Jacob Jenesak to
9 come down to the sheriff's office here in Prescott to be
10 interviewed about what had happened; correct?

11 A. That's correct.

12 Q. And those interviews began, then, in the early
13 morning hours of July 3rd, 2008. Am I right?

14 A. At the office, that's correct.

15 Q. And you were involved, primarily that morning, in
16 the interview of Mr. DeMocker; is that right?

17 A. That's correct.

18 Q. And was anyone else present in assisting you
19 during any portion of your interview with Mr. DeMocker that
20 morning?

21 A. Sergeant Louis Huante.

22 Q. And he is also -- he's a detective sergeant in
23 criminal investigations in the sheriff's office, is he?

24 A. That's correct.

25 Q. And who interviewed Charlott DeMocker that

1 morning?

2 A. I believe two individuals interviewed
3 Miss DeMocker.

4 Q. Who?

5 A. Lieutenant Rhodes and Commander Mascher.

6 Q. And who interviewed Jacob Jenesak?

7 A. At the office, I am not positive. I know sometime
8 during that night Sergeant Huante and Commander Mascher, and
9 I am not sure if anyone else had. I don't recall.

10 Q. And can you describe for Judge Lindberg the
11 physical arrangements inside the sheriff's office where these
12 interviews were conducted, particularly which subjects were
13 in what rooms at what time.

14 A. I am not positive where Charlott or Jacob were
15 throughout the night. I know at some point in the night they
16 ended up in a small conference room that we have in our
17 investigation section.

18 Mr. DeMocker was with me most of the
19 night in -- we have a small interview room down there.

20 Q. And Sergeant Huante was present for the entire
21 interview at the station with Mr. DeMocker, or was he in and
22 out of the room?

23 A. He was in and out of the room.

24 Q. And you were present, though, for the entire
25 investigation; is that right?

1 A. I was in and out of the room.

2 Q. Okay. There were times when Mr. DeMocker would
3 have been left alone?

4 A. That's correct.

5 Q. And my understanding is that at various times
6 during the morning as these interviews progressed, you would
7 speak with other individuals who were conducting these other
8 interviews -- the "other interviews" being the interviews of
9 Jacob and Charlott -- to essentially compare notes, to see
10 where they were and where you were in your interview; is that
11 correct?

12 A. Yeah. And I briefly would speak with mostly
13 Sergeant Huante during breaks.

14 Q. And was Sergeant Huante, then, to your knowledge,
15 communicating with Lieutenant Rhodes and Commander Mascher
16 about what information you were getting from your interview
17 with Mr. DeMocker?

18 A. I believe so.

19 Q. And then would Sergeant Huante come back and brief
20 you on what Lieutenant Rhodes and Commander Mascher said they
21 were hearing from Charlott?

22 A. Just that there was some minor briefs, yes. I
23 mean, not extensive, but yes, minor briefs.

24 Q. Do you remember that morning having direct
25 conversations -- face-to-face conversations -- with either

1 Lieutenant Rhodes or Commander Mascher about the progress and
2 results of their interview?

3 A. No.

4 Q. If you think for a minute, can you think now who
5 would have been interviewing Jacob if it wasn't you and it
6 wasn't Sergeant Huante and it wasn't Commander Mascher and it
7 wasn't Lieutenant Rhodes?

8 A. Can I think of who it would be?

9 Q. Yes.

10 A. I am not positive who it would have been.

11 Q. Do you think you once knew and just now can't
12 recall?

13 A. The only recording I remember hearing was an
14 interview with Commander Mascher and Jacob. I don't recall
15 any others.

16 Q. So you did hear a recording at some point of an
17 interview between Commander Mascher and Jacob?

18 A. Yes.

19 Q. Was it your understanding that that interview was
20 conducted in the early morning hour of July 3rd, 2008?

21 A. I believe so, yes.

22 Q. Did you listen to that tape recording that morning
23 or some other later date?

24 A. Oh, a later date. Much later.

25 Q. Was it your understanding, though, that the

1 interviews of Jacob and Charlott and, of course, the
2 interview that you were conducting of Mr. DeMocker, were
3 going to be recorded?

4 A. Yes.

5 Q. And your interview with Mr. DeMocker was actually
6 also video recorded; is that right?

7 A. That's correct.

8 Q. Do you know whether the interviews of Charlott and
9 Jacob were video recorded?

10 A. No, they were not being recorded.

11 Q. They were not in a place where there was video
12 equipment; is that right?

13 A. That's correct.

14 Q. Was there any discussion about holding off on
15 their interviews until you were done with the room with the
16 camera in it so that their interviews could be videoed?

17 A. There was no discussion on that.

18 Q. Now, during this period of time in the early
19 morning when these interviews were being done, in your mind,
20 who was directing this investigation?

21 A. I would say Sergeant Huante was directing me.

22 Q. Was Lieutenant Rhodes or Commander Mascher
23 involved in briefing you or directing you or Sergeant Huante
24 about how to interview Mr. DeMocker and what to ask
25 Mr. DeMocker?

1 A. Were they directing me?

2 Q. Yes.

3 A. No, sir.

4 Q. Did you receive any guidance or information from
5 anybody in law enforcement that morning about how to conduct
6 the interview of Mr. DeMocker?

7 A. I was given information as far as certain
8 questions to ask when that information came up, but as far as
9 directing exactly how to, no.

10 Q. Who gave you information about questions to ask?

11 A. Sergeant Huante.

12 Q. And was it your impression that that information
13 was based on what he had been told by Lieutenant Rhodes or
14 Commander Mascher?

15 A. Correct.

16 Q. What they wanted you to ask; is that right?

17 A. Certain aspects, yes.

18 Q. Did that information about questions that command
19 wanted you to ask come at the beginning of your interview
20 with Mr. DeMocker or during the course of your interview?

21 A. During the course.

22 Q. Do you have a sense of how many breaks you took
23 out of the room over the course of the morning with
24 Mr. DeMocker?

25 A. Hold on one second. I would say approximately

1 four breaks.

2 Q. Were you given any instruction about whether or
3 not to read Mr. DeMocker his Miranda rights in the beginning
4 of the interview by anyone in command, including Sergeant
5 Huante?

6 A. I remember asking as far as the time we decided to
7 re-Miranda and talking about that, yes.

8 Q. What do you remember about that?

9 A. At that point, Mr. DeMocker had indicated that he
10 was wanting to go, and I asked about that, and we decided to
11 re-Miranda at that time, and I went back into the room.

12 Q. Are you saying, then, that there wasn't a decision
13 at the beginning of the interview that you would go as far as
14 you could with Mr. DeMocker without Mirandizing him?

15 A. No, sir.

16 Q. Going back to the information that you have from
17 Sergeant Huante that you said you thought had been passed
18 from Lieutenant Rhodes and Commander Mascher through him, did
19 you also get any instructions or directions from either
20 Lieutenant Rhodes or Commander Mascher directly that didn't
21 come to you through Sergeant Huante that morning?

22 A. I recall being in the room with lieutenant Rhodes
23 and Sergeant Huante. I don't recall the exact directions or
24 anything like that specifically.

25 Q. At some point, apparently, it was decided that you

1 would be the affiant for a search warrant to be executed that
2 day; correct?

3 A. That's correct.

4 Q. Tell me how that decision was made.

5 A. For the most part, as being the case agent that
6 night, they asked that I be the affiant on that search
7 warrant.

8 Q. Who asked you?

9 A. I believe Sergeant Huante asked me.

10 Q. And when or at what time -- at what point in the
11 interview or what time, if you know, were you asked by
12 Sergeant Huante to be the affiant for this search warrant?

13 A. I don't recall the exact time throughout the
14 night. It was just once it was prepared, I was put down as
15 the affiant.

16 Q. Were you advised that you would be the affiant
17 while the interview of Mr. DeMocker was still in progress?

18 A. I think during a portion of it.

19 Q. Now, did I just hear you say that once the
20 affidavit was prepared, you were put down as the affiant; is
21 that right?

22 A. That's correct.

23 Q. So you didn't write this affidavit yourself?

24 A. I did not write the affidavit itself. I assisted
25 in the writing.

1 Q. Who did?

2 A. Detective Kennedy, I believe, typed most of it up.

3 Q. Well, let's talk about that process.

4 So this is Detective Teresa Kennedy; is
5 that right?

6 A. That's correct.

7 Q. She is a detective in the criminal investigations
8 section of the sheriff's office?

9 A. That's correct.

10 Q. And so she was present that morning?

11 A. That's correct.

12 Q. Was she a participant, to your knowledge, in the
13 interviews of Charlott or Jacob or Mr. DeMocker?

14 A. No, sir.

15 Q. And physically, where was Sergeant Kennedy when
16 she was typing --

17 THE COURT: I think it is detective.

18 MR. SEARS: I'm sorry. Detective. I'm giving
19 her a field promotion, Your Honor.

20 Q. Where was Detective Kennedy physically, if you
21 know, when she was typing this --

22 A. She was in her office.

23 Q. In the criminal investigations part of the
24 sheriff's office?

25 A. Yes, sir.

1 Q. On the first floor of 255 East Gurley?

2 A. Yes, sir.

3 Q. Now, let me see if I understand this. The
4 decision was made Detective Kennedy was going -- Detective
5 Kennedy was going to type this affidavit.

6 Were you involved in providing Detective
7 Kennedy with any of the information that went into this
8 affidavit?

9 A. Yes, sir.

10 Q. How did you do that?

11 A. During breaks and then relays through Sergeant
12 Huante, information was relayed.

13 Q. In writing?

14 A. No, sir.

15 Q. So at some time during one of these four breaks
16 that you told us about, you would go down to Detective
17 Kennedy's office and sit with her and give her information
18 that she would then type into this affidavit?

19 A. No, sir.

20 Q. Tell me how you did it, then.

21 A. Just Sergeant Huante would relay information back
22 and forth to myself, and then he would relay it. And they
23 were monitoring the interview, I believe, and were giving the
24 information.

25 Q. Did you ever go and have a face-to-face

1 conversation that morning with Detective Kennedy to assist
2 her in preparing this affidavit?

3 A. Throughout the night, yes, I spoke with her.

4 Q. How many different times?

5 A. I don't recall.

6 Q. So am I right in understanding you went and sat in
7 her office and talked with her about what you had learned
8 during your part of the interview?

9 A. The way it kind of went, she was typing
10 information that she received, and I would go in there and
11 speak with her and we would go over certain things, and
12 throughout the night that would go on.

13 Q. Do you know whether or not Sergeant Huante or
14 Lieutenant Rhodes or Commander Mascher went and sat with
15 Detective Kennedy in a similar way to provide her information
16 to go into this affidavit?

17 A. I didn't watch them do that. I know they spoke
18 with her.

19 Q. Do you know how long it took to prepare this
20 affidavit?

21 A. We started the process while we were at the --
22 while she was at the sheriff's office during the interviews,
23 and it went until approximately 7:30 before we got the search
24 warrant signed.

25 Q. A matter of four or five hours to do this

1 affidavit -- is that what you are saying -- if your interview
2 with Mr. DeMocker started at 1:40 in the morning?

3 A. That would be correct. 1:30, and then the search
4 warrant as officially signed at, I believe, 7:30 or 7:45. I
5 don't know the exact time.

6 . So this affidavit was a work in progress for most
7 of the morning, up until the point it was submitted to the
8 judge?

9 A. That's correct.

10 Q. Now, you were told early on that eventually it was
11 going to be prepared for your sworn signature; correct?

12 A. That's correct.

13 Q. And had you ever been the affiant in a search
14 warrant that was prepared in this manner?

15 A. Yes.

16 Q. How many?

17 A. I don't recall.

18 Q. More than ten?

19 A. No more than ten. I would say not more than ten.

20 Q. Have you ever been the affiant in a search warrant
21 in a homicide case?

22 A. No, sir.

23 Q. You have never been the case agent in a homicide
24 case either; correct?

25 A. That's correct.

1 Q. Now, do you know who made -- who in the command
2 structure that we talked about -- actually made the decision
3 to obtain a search warrant in this case that morning?

4 A. Do I know who exactly?

5 Q. Yes.

6 A. It was kind of a group decision, I believe.

7 Q. And you were part of that decision?

8 A. Yes, sir.

9 Q. Okay. Now, so the search warrant affidavit -- let
10 me give you these exhibits here.

11 MR. SEARS: If I could approach the witness,
12 Your Honor?

13 THE COURT: You may.

14 BY MR. SEARS:

15 Q. Deputy, I am going to show you a series of six
16 exhibits in evidence in this case. Let me tell you what they
17 are.

18 The first three are a series of
19 transcripts. These are Exhibits 146, 145, and 144, in
20 evidence in this case. And they are transcripts that the
21 defense has prepared of interviews with Mr. DeMocker that
22 night, broken down into sections as you ended each interview.
23 Interview with Charlott, and interview with Jacob.

24 And then three individual exhibits, which
25 are the affidavit we've just been talking about, which is

1 Exhibit 149 in evidence; the search warrant itself, 148 in
2 evidence; and then the return to the search warrant, filed
3 July 9, 2008, which is Exhibit 147.

4 And I think we have an understanding,
5 Deputy, that should you want to look at the copy that you
6 have of the transcripts of these same three interviews --
7 145, 144, and 146 -- at any point, let me know, if you would,
8 and then we can stop and do that, if you have questions about
9 whether that accurately portrays what you remember
10 Mr. DeMocker saying to you.

11 Am I clear on that?

12 A. Yes, sir.

13 Q. Okay. Now, am I right in understanding that by
14 the time that you signed this affidavit as the affiant, you
15 had not listened to tape recordings of any of these
16 interviews; is that right?

17 A. That is correct.

18 Q. And had you been personally briefed by either
19 Lieutenant Rhodes or Commander Mascher or Sergeant Huante
20 about what was attributed to Charlott or Jake or Mr. DeMocker
21 in the affidavit you were being asked to sign?

22 A. Yes, sir.

23 Q. Tell me the circumstances of those briefings.

24 A. Again, that was mainly with Sergeant Huante,
25 reference times that Charlott and Jacob had mentioned

1 throughout the night. And specifically, I think I recall a
2 location of a trail that was mentioned. I think that was put
3 in the affidavit.

4 Q. But my question is: You did not have face-to-face
5 briefings from either Lieutenant Rhodes or Commander Mascher
6 prior to the time you were asked to sign this affidavit about
7 what they had had Detective Kennedy type into this affidavit.
8 You were getting that information primarily from Sergeant
9 Huante; is that right?

10 A. I got briefed from Sergeant Huante on things, and
11 then I reviewed the search warrant, and I would ask questions
12 on where this information came from and what was said.

13 Q. Was there a final meeting with Commander Mascher
14 and Lieutenant Rhodes and Sergeant Huante and you to all
15 review together this affidavit to be sure that it was
16 accurate and correct before you were asked to sign it?

17 A. There was no final meeting.

18 Q. Do you know what time you signed the affidavit?

19 A. I can look at the time, as far as the judge signed
20 off on it.

21 Q. If we look at that exhibit, I believe the judge
22 signed off on it at 7:25 a.m.; is that right?

23 A. That's correct.

24 Q. Tell me, then, once this affidavit and the search
25 warrant were prepared, what was done with it?

1 A. It was a fax search warrant. We faxed the
2 affidavit to the judge, and then it was sworn out over the
3 phone.

4 Q. So, do you remember who actually faxed -- who went
5 and put it in the fax machine and hit the button?

6 A. I don't remember.

7 Q. Was it you?

8 A. I don't remember.

9 Q. Were you standing by?

10 A. Yes, sir.

11 Q. And so sheriff's office had Judge Markham's fax
12 number. At 7:25, do you know whether he was home or in this
13 building?

14 A. I believe he was home.

15 Q. And the procedure then would have been Judge
16 Markham would have called and asked to speak to you; is that
17 right?

18 A. That's correct.

19 Q. And did that happen?

20 A. Yes, sir.

21 Q. Do you know how much time went by between the time
22 the affidavit and search warrant were faxed to him and this
23 call where he wanted to speak with you?

24 A. No, but it should be on the -- the time stamp
25 should have been on the fax, but I am not seeing that on your

1 copy.

2 Q. It's cut off.

3 A. Okay. Then I don't know what it is.

4 Q. And do you remember speaking with Judge Markham on
5 the telephone?

6 A. Yes, I do.

7 Q. What did he say, and what did you say?

8 A. He asked as far as -- it's the same process, we
9 have to raise our hand, swear to tell the truth as far as the
10 affidavit and the information in there is true and accurate
11 to the best of my knowledge. He reviews it. If there is any
12 question, he asks.

13 Q. Well, let's go back to that. Where were you when
14 you took this call?

15 A. I was in -- there is a small -- it's where our
16 investigator secretary sits, a small area. That is where the
17 fax machine is.

18 Q. In the hallway there?

19 A. It's off the hallway.

20 Q. Was anyone else on the phone with you, other than
21 Judge Markham?

22 A. No, sir.

23 Q. And Judge Markham asked you to raise your right
24 hand, and he swore you in as you described?

25 A. That's correct.

1 Q. Did Judge Markham ask you any questions about the
2 affidavit?

3 A. I don't recall any questions right now.

4 Q. Do you have some estimate how long this telephone
5 call took?

6 A. I don't recall exactly how long the telephone call
7 took.

8 Q. Was that telephone call, to your knowledge, with
9 Judge Markham recorded --

10 A. No, sir, it was not recorded.

11 Q. -- by the sheriff's office?

12 Do you know whether Judge Markham
13 indicated he was recording the call?

14 A. He did not indicate he was recording the call.

15 Q. Do you have any experience in doing telephonic
16 search warrants with Judge Markham prior to this evening or
17 this morning?

18 A. I do not recall if I have had prior telephone
19 search warrants with Judge Markham prior to that morning or
20 after that evening.

21 Q. When the call ended, did Judge Markham indicate
22 what he was going to do next?

23 A. He was going to fax the return back and the signed
24 copy.

25 Q. He said he was going to sign the warrant --

1 A. Yeah.

2 Q. -- and then he would just fax it back to you?

3 A. That's correct.

4 Q. And that happened?

5 A. Yes, sir.

6 Q. And the copy that you have, the exhibit that you
7 have is an accurate copy -- it has Judge Markham's signature
8 and the notation 7:25 a.m.; is that right?

9 A. That's correct.

10 Q. And this is the way it came back to the sheriff's
11 office; is that right?

12 A. That's correct.

13 Q. Is that right?

14 A. That's correct.

15 Q. Now, had there been some discussion with
16 Mr. DeMocker that was recorded that you were going to obtain
17 or seek to obtain search warrants for his residence, his
18 automobile, and his office prior to obtaining the search
19 warrants?

20 A. I advised that we were going through the process
21 of getting the search warrant. I don't recall if I said his
22 office, his vehicle, and his home.

23 Q. And did you also tell Mr. DeMocker that as a
24 result, law enforcement did not want him to go to his home or
25 his office or to try and take possession of his vehicle while

1 the warrants were being obtained and executed?

2 A. I don't recall telling him that directly.

3 Q. Whether you told him or not, you certainly didn't
4 have any intention of letting him into his house or his
5 office while the warrants were being obtained; is that
6 correct?

7 A. That's correct.

8 Q. And in fact, law enforcement had been sent to his
9 house and to his office to secure -- to keep Mr. DeMocker and
10 anybody from going into those locations; correct?

11 A. That's correct.

12 Q. And you had possession of his automobile at that
13 time; correct?

14 A. No, sir.

15 Q. Where was his automobile?

16 A. It was parked in the parking lot.

17 Q. When you got the search warrant, you took
18 possession of it; correct?

19 A. Correct.

20 Q. And you weren't going to let Mr. DeMocker have
21 access to it until you were done with the search warrant;
22 correct?

23 A. Correct.

24 Q. Now, at some point did Mr. DeMocker contact his
25 former divorce attorney, Anna Young?

1 A. Yes, he did.

2 Q. And she came down to the sheriff's office; is that
3 right?

4 A. That's correct.

5 Q. And there was a discussion with her, wasn't there,
6 that you were going to obtain these search warrants that the
7 judge signed and that in the interim Mr. DeMocker was not to
8 be at his home or his office; correct?

9 A. That's correct.

10 Q. And she agreed; correct?

11 A. Correct.

12 Q. And in fact, you were also seeking to obtain a
13 warrant at the same time for biological evidence from
14 Mr. DeMocker; correct?

15 A. That's correct.

16 Q. And he cooperated. In fact, he offered to consent
17 before a warrant was obtained; didn't he?

18 A. I reviewed that. Yes, he did.

19 Q. Now, so at -- by 7:25 in the morning, Mr. DeMocker
20 had left the sheriff's office; is that right?

21 A. No, sir.

22 Q. When did Mr. DeMocker leave the sheriff's office?

23 A. I don't know the exact time he left.

24 Q. When the warrant was obtained, to your knowledge
25 was Mr. DeMocker still in the building?

1 A. Yes, he was.

2 Q. Were Jacob and Charlott still in the building?

3 A. Not by that time. I believe they had left.

4 Q. Okay. Had they also been told that they were not
5 to go back to the Alpine Meadows location or to the UBS
6 office?

7 A. I believe they were told that.

8 Q. And even if they hadn't been told that, they were
9 not permitted to go inside the Alpine Meadows or UBS office?

10 A. That's correct.

11 Q. During your interview with Mr. DeMocker, was there
12 any discussion with him, that you recall, in which you asked
13 him whether he would simply consent to a search of his
14 office, his car, and his home, rather than requiring a search
15 warrant?

16 A. I don't recall asking him that.

17 Q. There was a discussion, though, about him
18 consenting to DNA and blood; correct?

19 A. I believe we actually said saliva, also.

20 Q. And he said he would do all of that?

21 A. Yes, sir.

22 Q. But a warrant was obtained anyway?

23 A. Yes, sir.

24 Q. If you could take a look at -- I'm sorry, I've
25 lost the exhibit number in my mind -- I'm looking at the

1 exhibit in front of you, the affidavit for search warrant.

2 THE COURT: 149?

3 MR. SEARS: Thank you, Your Honor.

4 Q. Do you have that in front of you?

5 A. Yes, sir.

6 Q. Is Exhibit 149 a complete and accurate copy of the
7 entire affidavit for search warrant in 2008-0702-SW, which is
8 a Prescott Justice Court number?

9 A. If I can just review it real quickly.

10 (Whereupon, the witness reviews a document.)

11 It appears so.

12 Q. It is. And then would you look at the search
13 warrant -- and I have also not written that down.

14 MR. SEARS: I will write it down and not
15 forget it again, Your Honor.

16 THE COURT: 148.

17 MR. SEARS: Thank you, Your Honor.

18 Q. Exhibit 148 in front of you, would you tell me,
19 please, if that is a true and accurate copy of the three-page
20 search warrant that you told us was signed by Judge Markham
21 on the morning of July 3rd, 2008.

22 A. It appears to be.

23 Q. Now, after the warrant was faxed back to the
24 sheriff's office, what was done with it, and what was your
25 involvement?

1 A. Copies were made of the search warrant itself.
2 The original fax were held for the return, until we could do
3 the return on that.

4 Q. And then did you proceed to one of these locations
5 to participate in the search?

6 A. Yes, I did.

7 Q. Where did you go?

8 A. First, I went to the office, which is on Plaza
9 West Drive.

10 Q. The UBS office --

11 A. Yes, sir.

12 Q. -- Plaza West off of Thumb Butte Road?

13 A. Correct.

14 Q. And did you eventually go to the Alpine Meadows
15 scene?

16 A. After the Plaza West.

17 Q. What was done with Mr. DeMocker's automobile after
18 the warrant was obtained?

19 A. I don't recall who was in charge of the vehicle.
20 There was a group of detectives or a sergeant that was in
21 charge of the vehicle.

22 Q. Who organized the teams that were responsible for
23 executing this warrant at these various locations? Who was
24 in charge of doing those assignments?

25 A. I believe Sergeant Huante was.

1 Q. Not you?

2 A. No.

3 Q. And were the assignments made in the typical
4 manner of a group of uniformed officers and detectives that
5 would go to each location and then each perform various
6 functions -- typical functions in the execution of a search
7 warrant?

8 A. Yes, sir.

9 Q. And were you assigned some particular function at
10 the search of the UBS office, or were you there simply to
11 observe?

12 A. I was there simply to observe.

13 Q. And do you have some sense of when you arrived at
14 the UBS office?

15 A. I don't know exact time. I can check the -- my
16 report to see, if you would like me to.

17 Q. Let's go back, if we could, then, and look at
18 Exhibit 149, the affidavit. Let's begin with the first page
19 of Exhibit 149.

20 The affidavit alleges that you are the
21 affiant and that on or about July 2, 2008, the crime of
22 murder were being committed by -- that's the grammar --
23 Mr. DeMocker with his identifying information.

24 Who made the decision, if you know, to
25 allege that probable cause existed to believe that

1 Mr. DeMocker committed a murder?

2 A. It was decided during the writing of the search
3 warrant.

4 Q. Did you provide Detective Kennedy that
5 information, that the crime to be alleged in that place on
6 the first page was murder, and that Mr. DeMocker was the
7 suspect?

8 A. No, I did not.

9 Q. Do you know who did?

10 A. No, I do not.

11 Q. Did you participate -- looking at the last two
12 paragraphs on Page 1 and the first four paragraphs on the
13 next page -- did you decide which locations would be the
14 subject of this initial search warrant in this case?

15 A. I did not personally decide. It was more like a
16 group decision.

17 Q. Where did the information regarding the physical
18 description of the Alpine Meadows and Bridle Path locations
19 come from that is contained in this affidavit?

20 A. By the deputy that was at the residence.

21 Q. How did they communicate that information to
22 Detective Kennedy?

23 A. It got passed by phone.

24 Q. When you read this affidavit prior to signing it,
25 did you have personal knowledge of the descriptive

1 information for both the Alpine Meadows and the Bridle Path
2 locations -- the color, the location of other buildings?

3 A. From what was written, I had that information.

4 Q. Did you have personal knowledge beyond what was
5 written?

6 A. Just what was told to me.

7 Q. You had not been to the Alpine Meadows location at
8 that point; is that right?

9 A. No, sir. That's correct.

10 Q. But you had been to Bridle Path; is that right?

11 A. That's correct.

12 Q. On the second page, what is described as the
13 mother-in-law residence -- that's the guest house we've
14 talked about so much; correct?

15 A. That's correct.

16 Q. It was occupied by Mr. Knapp that evening?

17 A. That's correct.

18 Q. It has measurements. You certainly didn't measure
19 it; correct?

20 A. That's correct.

21 Q. And the office -- you had not been to the UBS
22 office at the time you signed this affidavit; is that right?

23 A. That's correct.

24 Q. And had you looked at Mr. DeMocker's vehicle
25 carefully enough to get the plate number and the VIN number

1 that is listed in this affidavit? Did you record that
2 information yourself?

3 A. No, I didn't put the VIN. I saw the plate.

4 Q. Now, going down, there are two boxes checked in
5 the middle of the second page of Exhibit 149 that the warrant
6 was seeking property or things which were used as a means of
7 committing a public offense; correct?

8 A. Correct.

9 Q. What was your understanding of that phrase? What
10 did that mean to you on July 3rd, 2008?

11 A. We were looking for items that were used in the
12 offense.

13 Q. Such as?

14 A. Any weapons, any instruments, just anything that
15 can be tied to the offense itself. It could be --

16 Q. The next box that is checked, "consists of some
17 items or constitutes some evidence which tends to show that a
18 particular person has committed a public offense"; is that
19 right?

20 A. That's correct.

21 Q. Who decided which of the five boxes would be
22 checked in this affidavit?

23 A. It's just decided, depending on the type of crime,
24 what fits.

25 Q. With respect to this case, can you tell me who

1 made the decision to check those two of the total of five
2 boxes on this affidavit?

3 A. I was part of making that decision.

4 Q. Is there someone who ultimately made the decision,
5 to your knowledge, to check those two boxes and not the other
6 three?

7 A. I would say that is a group decision.

8 Q. Did you tell Detective Kennedy personally to check
9 those two boxes?

10 A. I don't recall telling her to check those two
11 boxes.

12 Q. Now, the remaining portion of the second page of
13 Exhibit 149 are specific items -- the Gary Fisher mountain
14 bike, ending with photos of the interior and exterior of all
15 locations to be searched.

16 Who provided that information -- that
17 information being all of these bullet-point items at the
18 bottom of Page 2 -- to Detective Kennedy?

19 A. That was a group, as far as the information
20 received and where it came from.

21 Q. Are any of those items things that you recall
22 telling Detective Kennedy to be sure to put in the warrant?

23 A. I recall going over some of those items and
24 specifically talking about them.

25 Q. Which ones?

1 A. The Gary Fisher mountain bike. The biking and
2 riding gear and all that goes with that.

3 Q. What about the clothing?

4 A. Any clothing. I recall going through all these
5 items and making sure -- and where the information was, I
6 can't say that I told her specifically that one or someone
7 else did, but I just recall going through them.

8 Q. And then on the next page, you have a series of
9 remaining bullet-point items. Do you see that?

10 A. Yes, sir.

11 Q. The first item is "journals, notes, e-mails."

12 Who among this group, if you know,
13 determined that those items should be in this search warrant?

14 A. I would say it was a group discussion of that.

15 Q. What information did you have on July 3rd,
16 sometime shortly before 7:25 in the morning, 2008, that
17 journals, notes, and e-mails existed at this residence?

18 A. Mr. DeMocker commented on e-mails during his
19 interview.

20 Q. Did -- can you tell me what information that you
21 put in the affidavit or that was put in the affidavit looking
22 at the regular information from the next page, the page after
23 that, and then the half-page at the end of Exhibit 149? Can
24 you point to me, in that affidavit, any reference to
25 journals, notes, or e-mails?

1 A. (Whereupon, the witness reviews a document.)

2 There is no information that specifically
3 talks about e-mails.

4 Q. I'm sorry, I didn't hear you.

5 A. There is no information that is documented that
6 specifically talks about e-mails or journals.

7 Q. The next bullet point is "electronic storage
8 devices, including cell phones, digital media, cameras, video
9 cameras, computers, hard drives, PDAs, answering machines,
10 caller ID logs, or computer logs."

11 That looks suspiciously like what is
12 sometimes called "boilerplate" information. Are you familiar
13 with that term?

14 A. Yes, I am.

15 Q. Would it be fair to say that that descriptive list
16 of items is a boilerplate phrase that appears in many
17 different kinds of search warrants that the Yavapai County
18 Sheriff's Office seeks to obtain?

19 A. That is information that is in boilerplates. So,
20 yes.

21 Q. That is a boilerplate phrase; is that right?

22 A. Those are -- we do have boilerplates. I am not
23 sure if that was pulled from a boilerplate.

24 Q. Did you construct this list from information that
25 you had?

1 A. No, I did not construct the list.

2 Q. Do you know who did?

3 A. Detective Kennedy. I am not sure if she had a
4 boilerplate or anything like that or how that was --

5 Q. So she -- somehow in her computer she can pull up
6 some sort of boilerplate information or template for search
7 warrant affidavits to use? Is that your understanding?

8 A. She could.

9 Q. Do you know if she did?

10 A. I don't know if she did.

11 Q. Now, can you point in the remainder of the
12 affidavit -- the two-and-a-half pages that are titled
13 "Regular Information Form," where any of these items that are
14 listed in the boilerplate phrase "beginning with electronic
15 storage devices" are referenced?

16 A. The only place I saw a computer was just
17 referencing his turning off the computer from work.

18 Q. Okay. Turning off his computer at work; right?

19 A. And then reference to phones and everything that
20 is referenced, the information from Ruth Kennedy is the
21 calls.

22 Q. From who? Yes, that he spoke to somebody on the
23 telephone; is that right?

24 A. Correct. And then the information coming from her
25 about her phone.

1 Q. The affidavit doesn't say anything about a cell
2 phone, does it?

3 A. No, it does not mention him using a cell phone.

4 Q. In your understanding, since you signed this
5 affidavit, what is "digital media"?

6 A. My understanding of that is it can refer to CDs,
7 ZIP drives, anything that can hold digital or computerized --

8 Q. Can you point me to anyplace in your affidavit
9 where "digital media" is described either using that phrase
10 or one of the other synonyms that you just provided?

11 A. I don't see where it's in there.

12 Q. Cameras are listed in the affidavit.

13 Where -- you know, that's something you
14 want to seek to search and seize -- where in your affidavit
15 is there any reference to camera or cameras?

16 A. I don't believe there is any reference to that.

17 Q. Similarly, where in your affidavit, if anyplace,
18 is there a reference to a video camera or cameras?

19 A. There is no reference to that.

20 Q. Is there any other reference to a computer, other
21 than the statement that Mr. DeMocker told you that he went
22 back to his office to turn off his computer?

23 A. I don't believe so.

24 Q. Is there any reference in the affidavit to a hard
25 drive, which I presume is a computer hard drive?

1 A. No, there is not.

2 Q. What is a "PDA," to your knowledge?

3 A. It is personal data something. I can't recall
4 what the "A" stands for.

5 Q. Assistant, perhaps?

6 A. There you go.

7 Q. Like one of these? Like the BlackBerry or
8 something like that? Is that a PDA?

9 A. I believe so, yes.

10 Q. Okay. Is there any reference in your affidavit to
11 a PDA?

12 A. No, sir.

13 Q. Is there any reference in your affidavit to an
14 answering machine?

15 A. It does not mention answering machine.

16 Q. Is there any reference in your affidavit to
17 something called a "caller I.D. log"?

18 A. No, sir.

19 Q. What is a "caller I.D. log"?

20 A. It can be -- it's different for different
21 residences. It is a small box, usually, that shows a display
22 of the calls that came through.

23 Q. There is no reference to that in your affidavit?

24 A. No, sir.

25 Q. And finally, what is a "computer log" as you use

1 it in this affidavit?

2 A. The only thing I can think with the computer logs
3 reference, this is just the log-in log-out times of the
4 office computer.

5 Q. Is there any reference in the affidavit to
6 computer logs other than the reference to -- you told us
7 about several times, now -- to Mr. DeMocker making a
8 statement to you that he went back to the office to turn off
9 his computer?

10 A. No, there is not.

11 MR. SEARS: Your Honor, if you were inclined
12 to take a morning recess, this would be a good time for me.

13 THE COURT: Any problem with that?

14 MR. BUTNER: No. That's fine, Judge.

15 HE COURT: We'll take a 15-minute recess.

16 (Brief recess.)

17 THE COURT: After the break, we are continuing
18 with the examination by Mr. Sears of Detective Brown.

19 Mr. Butner is present for the State. Mr. Sears is present
20 for the defendant, who is present in custody.

21 You may proceed.

22 MR. SEARS: Thank you.

23 DIRECT EXAMINATION RESUMED

24 BY MR. SEARS:

25 Q. Deputy, going back, now, to the last page of the

1 two-and-a-half page Regular Information Form, there is one
2 additional bullet point.

3 Can you point me to anyplace in your
4 affidavit that makes reference to cell phone chargers or
5 batteries in connection with this case?

6 A. The only referencing with cell phones, again,
7 is -- not again, I apologize -- is from Charlott, where it
8 said she began text messaging to see if he was okay.

9 Q. My question was the reference in the Regular
10 Information Form to cell phone chargers and batteries. I am
11 looking for anyplace, if you can direct me to it in the
12 affidavit, where chargers or batteries are --

13 A. There is nothing referencing batteries or
14 chargers.

15 Q. Now, if we can go back to the first couple of
16 paragraphs of the Regular Information Form, several pages
17 back, if you find Exhibit 149, if you can find that place.
18 The first paragraph talks about the beginning of this
19 investigation and contacts with Ruth Kennedy.

20 At the time you signed the affidavit, had
21 you spoken with Ruth Kennedy?

22 A. No, I had not.

23 Q. Do you know if any Yavapai County Sheriff's
24 personnel had spoken with Ruth Kennedy by the time this
25 affidavit was signed on the morning of July 3rd?

1 A. The dispatchers.

2 Q. Did you provide the information in the first
3 paragraph of the Regular Information Form to Detective
4 Kennedy to put in this affidavit?

5 A. I don't recall if I provided that to her or if she
6 got that from someone else.

7 Q. Was the information in the first paragraph of the
8 Regular Information Form on Exhibit 149 within your personal
9 knowledge at the time you signed the affidavit? Did you know
10 these things yourself?

11 A. Yes. From the -- from dispatch, yes.

12 Q. The second paragraph of the Regular Information
13 Form, the second sentence of that paragraph says that Deputy
14 Taintor made entry into the residence and located a female
15 subject believed to be Virginia Carol Kennedy in a bedroom
16 converted into an office area.

17 Did you speak to Deputy Taintor about
18 that event before you signed the affidavit?

19 A. No, that information was related to me.

20 Q. By whom?

21 A. I believe Sergeant Huante.

22 Q. When you signed the affidavit, did you believe
23 that Deputy Taintor had gone inside the residence and located
24 the body?

25 A. Yes, I did.

1 Q. Did you have any other information about the
2 circumstances of discovering the body that would be
3 different -- and I am talking about the time you signed the
4 affidavit -- that would be different than this statement that
5 Deputy Taintor went inside the residence?

6 A. I don't recall at that time what I knew. I know
7 what I know now, but I am not sure at that time.

8 Q. You know now that he did not go inside the
9 residence, that he called for back-up?

10 A. He eventually went inside the residence, but
11 initially he called for back-up.

12 Q. But from what you know later, you know that this
13 statement was inaccurate, that Deputy Taintor did not make
14 entry into the residence and locate the body, but that that
15 came later.

16 A. He did make entrance into the residence
17 eventually. It doesn't state a time period in that sentence.

18 Q. Well, this paragraph ends with "at this point
19 Deputy Taintor requested back-up to assist in securing the
20 residence at the scene," which would indicate that the
21 affidavit means that he made entry into the residence and
22 located the body before he called back-up. That's what this
23 affidavit says.

24 A. I apologize. I didn't read down further. You are
25 correct.

1 Q. So that -- based on information you have now, you
2 know that is incorrect.

3 A. Correct. The information I know now, at that time
4 he looked through the back window, called for back-up, and
5 later went in.

6 Q. Now, let me see if I understand the basis for
7 this. This paragraph, this scenario with the time and Deputy
8 Taintor arriving on the scene, all that information was
9 relayed to you by Detective Sergeant Huante; is that right?

10 A. Not all that information, no.

11 Q. What part of that information came from a
12 source -- that "information" being the second paragraph --
13 came from a source other than Detective Sergeant Huante?

14 A. For that paragraph, I am not sure if someone else
15 had spoken with Deputy Taintor or not. So I am not sure
16 where all that information came from. I personally don't
17 know where all that information came from.

18 Q. So that got into this affidavit from sources other
19 than you; correct?

20 A. I did not know of that, all that information.

21 Q. Okay. But only you were asked to swear to the
22 truth of that information under oath; correct?

23 A. That's correct, and I believe that to be accurate.

24 Q. Based on what other people put in the affidavit or
25 what other people told you? Which was it?

1 A. For what was put in the affidavit and for what was
2 told, I believe that to be accurate.

3 Q. I am just trying to understand the process here,
4 the idea of this group process. And to be clear on this
5 point, are you saying that when you were given the final
6 version of this affidavit to review and sign, that paragraph
7 was -- "that paragraph" being the second paragraph -- was in
8 the affidavit at that time; is that right?

9 A. When I reviewed it, it was in the affidavit at
10 that time. And when I read through it, I believed it to be
11 accurate.

12 Q. Had you seen that paragraph in writing before you
13 picked it up to sign it?

14 A. I reviewed it before it was printed out, yes.

15 Q. But you can't tell us as you sit here today where
16 that information came from, it just didn't come from you?

17 A. Correct. I don't recall exactly how that
18 information -- as far as who relayed that information.

19 Q. Tell me what inquiry you made to determine whether
20 it was true or not before you signed this affidavit attesting
21 it was true?

22 A. Just with speaking with Sergeant Huante and
23 Detective Kennedy, going through it, asking if this is the
24 information. That is all I had.

25 Q. So working backwards, if Detective Sergeant Huante

1 gave you mistaken or erroneous information that went into
2 this, that was the end of your inquiry; if he told you
3 something, you just assumed that he was telling you the
4 truth; correct?

5 A. That would be correct.

6 Q. And you didn't do any independent investigation or
7 make any effort to verify from some other source what he was
8 telling you?

9 A. If this information came from Sergeant Huante, I
10 did not go and attempt to get any other information.

11 Q. Now, when were you out at the scene that night?
12 Before you came back to Prescott to the sheriff's office to
13 interview Mr. DeMocker, you would have had an opportunity to
14 talk to Deputy Taintor, the first responder; correct?

15 A. I did not have an opportunity to talk to Deputy
16 Taintor.

17 Q. He was out at the scene; wasn't he?

18 A. I don't believe I saw Deputy Taintor that night.

19 Q. Did you know, at the time you were driving back to
20 Prescott to conduct this interview with Mr. DeMocker, how the
21 body was discovered?

22 A. How -- what part of that? I mean, I know how the
23 body was found in the room and everything. Is there -- a
24 little bit more detail, if you can.

25 Q. The second paragraph of this Regular Information

1 Form has a scenario that describes Deputy Taintor arriving
2 and then it says what he did.

3 And my question to you is, when you were
4 driving back from the scene to Prescott to begin the
5 interview of Mr. DeMocker, did you know how Deputy Taintor
6 came upon the body?

7 A. At that point, while driving back to the office, I
8 was aware that Deputy Taintor arrived on scene and that
9 officers responded for back-up. I don't know the series of
10 events of how he went in or did not go in at that time.

11 Q. Where did you get that information?

12 A. That was the information that was relayed to me,
13 again, through either Sergeant Huante or information that was
14 passed on.

15 Q. Now, the fourth paragraph of the Regular
16 Information Form that begins "Examination of the scene
17 revealed" -- do you see that paragraph?

18 A. Yes, sir.

19 Q. Did you see the blood drop on the sidewalk just
20 outside the door that night?

21 A. Yes, sir.

22 Q. And did you see fresh bicycle tracks on a public
23 trail behind the victim's residence that night?

24 A. No, sir.

25 Q. Were you told about this by somebody?

1 A. Later that evening, yes.

2 Q. Before you signed the affidavit?

3 A. Yes, sir.

4 Q. Were you also told that this public trail actually
5 was behind a locked gate, that the entrance that police had
6 discovered to the trail was through a gate that was locked?

7 A. I don't recall if I was told that that night or
8 the next day.

9 Q. When you signed the affidavit on July 3, did you
10 believe that there was a public trail behind the victim's
11 residence?

12 A. I believed that there was a trail with bicycle
13 tracks, yes.

14 Q. Well, the phrase "public trail" is in your
15 affidavit; correct?

16 A. Correct.

17 Q. What did "public trail" mean to you that night?

18 A. A trail used by the public.

19 Q. What information do you have that that was a
20 public trail?

21 A. Just what was passed to me that night.

22 Q. By?

23 A. Most of the information came through Sergeant
24 Huante.

25 Q. The paragraph -- two paragraphs after that that

1 begins "During this investigation it was learned" -- do you
2 see that paragraph?

3 A. Yes, sir.

4 Q. Do you see that paragraph?

5 A. Yes, sir.

6 Q. Okay. In that -- my belief is that that
7 information that goes into your affidavit came from your
8 interview of Mr. DeMocker; is that correct?

9 A. Most of that information came from Mr. DeMocker.

10 Q. Can you look at the transcript in front of you --
11 it's the larger of the three transcripts -- and first tell me
12 on the back there is an evidence number, it's very small.

13 A. 144.

14 Q. 144. Would you look at Page 22 of that exhibit,
15 please.

16 MR. BUTNER: What page was that, Mr. Sears?

17 MR. SEARS: Page 22, Mr. Butner.

18 MR. BUTNER: Thank you, sir.

19 BY MR. SEARS:

20 Q. Do you have Page 22?

21 A. Yes, sir.

22 Q. Now, in your affidavit you say that the divorce
23 was reportedly finalized in May 2008, and it was ordered that
24 Steven DeMocker has to turn over a 401-K valued at a \$190,000
25 to her.

1 That's what your affidavit says; correct?

2 A. That's correct.

3 Q. Now, looking at Page 22, beginning on line 9, are
4 you the unidentified male asking questions on that page?

5 A. I can look at my -- I believe I am.

6 Q. Can you look at your transcript to confirm that?

7 A. Yes, sir.

8 Q. Thank you.

9 A. Okay. Page 22 for you, is that while we are out
10 on the scene, or are we at the office? I don't know what
11 your page is.

12 Q. This is at the office.

13 A. This is at the office?

14 Q. Yes.

15 A. And you said your pages start out at the breaks;
16 is that correct.

17 Q. Well, you can go back to the break, yeah.

18 A. If we could, that would be great.

19 Q. Hang on just a second.

20 A. Because with that amount of pages, I would say
21 that is out at the scene.

22 MR. BUTNER: Looks like it might be No. 2.

23 BY MR. SEARS:

24 Q. No. 2, would that be out at the scene?

25 A. Yeah, that would be out at the scene.

1 Q. Well, that being the case, can you tell me whether
2 that last sentence of this paragraph, talking about the
3 401-K, was based on information provided to you in a recorded
4 interview with Mr. DeMocker out at the scene?

5 A. (Whereupon, the witness reviews a document.)

6 It is Page 14 on mine, just so we can
7 relate.

8 Q. Do you find the same -- we will go to Page 22 on
9 ours, which is the exhibit the Court has.

10 Where unidentified male says "Okay" --
11 line 8 on ours -- and Mr. DeMocker says: "And you know Carol
12 and I are having a disagreement over a detail of our divorce
13 decree."

14 Did you find that?

15 A. Correct. And the "And how much was that, sir,"
16 that is not me.

17 Q. I'm sorry?

18 A. That would not be me. That would be Sergeant
19 Huante.

20 Q. I am still not hearing you, sir.

21 A. The unidentified male listed in your transcripts
22 for "And how much was that, sir," that was Sergeant Huante.
23 And it is written on mine as "And how much was that check?"

24 Q. Were you in the room when those questions and
25 answers were given?

1 A. I was outside by the car.

2 Q. Did Sergeant Huante brief you on that information?

3 A. I was standing right next to him.

4 Q. You were outside -- I'm sorry, I said the room.

5 This was out at the scene; correct?

6 A. Correct.

7 Q. So Sergeant Huante is talking to Mr. DeMocker, and
8 you are standing right there, and you can hear both Sergeant
9 Huante and Mr. DeMocker; correct?

10 A. That's correct.

11 Q. Now, the affidavit that we are talking about in
12 this case is written prospectively. It was ordered that
13 Mr. DeMocker has to turn over a 401-K valued at \$190,000 to
14 her. That is what the affidavit says; correct?

15 A. That's correct.

16 Q. And in fact, Mr. DeMocker was telling you and
17 Detective Sergeant Huante that that transfer had already
18 happened, that she had gotten the money?

19 A. Correct.

20 Q. So it wasn't something that he had yet to do at
21 the time of her death. That had already taken place, and the
22 provisions of the divorce were being implemented about paying
23 bills with it. That was what Mr. DeMocker was describing;
24 right?

25 A. That's what Mr. DeMocker was describing, correct.

1 Q. Now, did you have -- is there any other
2 information that you had from any other source at the time
3 you signed this affidavit that contradicted that, that
4 indicated that Mr. DeMocker still had to turn over this 401-K
5 to her, had not yet done it?

6 A. There is no information to confirm that.

7 Q. The next paragraph talks about interviews with
8 Charlott and Jacob and describes who they are. And during
9 the break, Mr. Butner has graciously obtained copies of just
10 disclosed transcripts to us. There is an interview -- we
11 talked about the interviews earlier of Jacob and Charlott
12 separately, and apparently there was an interview conducted
13 by Commander Mascher with both Jacob and Charlott at about
14 2:33 in the morning on July 3rd; is that right?

15 A. I believe that is right.

16 Q. I think that has been marked as an exhibit.. Do
17 you know the number?

18 MR. BUTNER: It is one of those up there.
19 Should be Exhibit 150, I believe.

20 MR. SEARS: We have no objection to the
21 admission of 150, Your Honor.

22 THE CLERK: 150 is the transcript of Jacob
23 Jenesak and Charlott DeMocker, and 151 is Steven DeMocker.

24 MR. BUTNER: Thank you.

25 THE COURT: These are via the County

1 Attorney's Office. That's the distinction.

2 MR. BUTNER: That would be fine, Judge. They
3 were actually disclosed to the defense on November the 3rd,
4 but, yes.

5 THE COURT: Your office or the YCSO?

6 MR. BUTNER: Pardon?

7 THE COURT: Your office or YCSO?

8 MR. BUTNER: Well, it came from YCSO through
9 my office and went to the defense.

10 THE COURT: Exhibits -- any problem with
11 admitting 150 and 151?

12 MR. BUTNER: How about 151, Mr. Sears?

13 MR. SEARS: 151, Your Honor, we haven't had a
14 chance to really understand what this is. It looks like it's
15 a portion of the transcript that we provided Mr. DeMocker
16 that the State has had an opportunity to proof, and I just
17 haven't had a chance to go back and compare that to what we
18 have, to understand this.

19 THE COURT: So 150 is agreed upon being
20 admitted by stipulation?

21 MR. SEARS: Yes.

22 MR. BUTNER: Yes. And 151 is Interview No. 4,
23 so to speak, in the series, and it is slightly different than
24 the transcript that was prepared by the defense, and that's
25 why we marked it.

1 THE COURT: Okay. 150 is admitted, and that
2 being both Jacob and Charlott?

3 MR. SEARS: That's right.

4 THE COURT: All right. A combination.

5 MR. SEARS: If I may have a moment looking at
6 150, Your Honor.

7 Q. So in your affidavit, are those the interviews,
8 now, that you were referring to with Charlott and Jacob?
9 There would be interviews of each of them separately and then
10 a joint interview of the two of them together by Commander
11 Mascher. Is that the sum total of the interviews with
12 Charlott and Jake?

13 A. I can say that information was received during
14 interviews. I don't know which part came from which
15 interview.

16 Q. Well, I just want to know what your understanding
17 is of how many different interviews were conducted that night
18 and that morning with Charlott and Jake. I understand there
19 are three. There are separate interviews of each of them,
20 and then there's one interview of the two of them. Am I
21 right?

22 A. I am not positive on that.

23 Q. Have you ever seen Exhibit 150 of this transcript
24 before?

25 A. I don't have that exhibit.

1 MR. SEARS: If I can approach the witness,
2 Your Honor?

3 THE COURT: You may.

4 BY MR. SEARS:

5 Q. This is 150 in evidence. This is reputed to be
6 the transcript of the joint interview by Commander Mascher of
7 Charlott and Jake.

8 A. I have never read through this transcript before.

9 Q. Before today, have you ever seen any transcripts
10 of any of these interviews?

11 A. Mr. DeMocker's.

12 Q. How about the interviews with Charlott and Jake?

13 A. No, sir.

14 Q. Okay. The last paragraph that begins at the
15 bottom of the first page of the Regular Information Form, it
16 goes on to the next page, talks about statements attributed
17 to both Charlott and Jacob about Mr. DeMocker. Do you see
18 where I am talking?

19 A. Yes, sir.

20 Q. Okay. The affidavit says both Charlott and Jacob
21 said Mr. DeMocker left home at 1600 hours, or four o'clock in
22 the afternoon; is that right?

23 A. Yes, sir.

24 Q. Where did that information come from?

25 A. That was from Sergeant Huante.

1 Q. If you could look at --

2 MR. SEARS: If I may just have a moment, Your
3 Honor.

4 Q. Look at Charlott's interview first. That is
5 Page 9. Page 9 of the interview in front of you with
6 Charlott DeMocker, which is Exhibit 140 --

7 A. 140.

8 Q. 140 should be an interview with Charlott. Do you
9 have that?

10 A. I have 145.

11 Q. Yes, 145. Would you look at Page 9 of that
12 exhibit, please.

13 A. (Whereupon, the witness reviews a document.)

14 Q. I call your attention to line 21, question by
15 Lieutenant Rhodes. Do you see that?

16 A. Yes, sir.

17 Q. This is the interview conducted by Lieutenant
18 Rhodes with Charlott alone; correct?

19 A. That is what it says in the initial information.

20 Q. Line 21, Lieutenant Rhodes asks Charlott, "And
21 then he left to go to the trail ride at 5:30."

22 Charlott answers at line 23, "Yeah, I
23 think so."

24 Is that right?

25 A. That's correct.

1 Q. Okay. Did Lieutenant Rhodes tell you something
2 different that night, either directly or through Sergeant
3 Huante, about what Charlott said regarding this issue of when
4 Mr. DeMocker started his ride?

5 A. Lieutenant Rhodes did not tell me something
6 directly to me on that.

7 Q. Did Sergeant Huante tell you that?

8 A. He mentioned the 1600 hours.

9 Q. Okay. Do you know of any other statement in any
10 transcript or recorded interview with Charlott in which she
11 changes her opinion as to what time Mr. DeMocker left from
12 5:30, that we just read on Exhibit 145, to four o'clock in
13 the afternoon, which is what was in the affidavit?

14 A. I haven't gone through the transcript, so I can't
15 tell you that.

16 Q. Okay. Would this be another example of you simply
17 relying on Sergeant Huante to give you accurate information?

18 A. Yes, sir.

19 Q. And then you adopted his information and swore to
20 it; correct?

21 A. That's correct.

22 Q. Did Sergeant Huante tell you that Lieutenant
23 Rhodes had said that Charlott said that Mr. DeMocker left
24 home at four o'clock in the afternoon for his ride?

25 A. No, sir.

1 Q. What did he tell you?

2 A. The information was at approximately 4:00 p.m.

3 Q. Going to the next page, the affidavit -- that
4 paragraph which began on the previous page ends with
5 "they" -- referring to Jacob and Charlott -- "said he ate
6 very little, which they both said was unusual."

7 Where did that information come from?

8 A. During the interviews with the two.

9 Q. Okay. If we could look at Page 13 together, of
10 Exhibit 145, Charlott's interview.

11 A. Page 13.

12 Q. Page 13 of Exhibit 145 at Line 5.

13 A. Okay.

14 Q. Question by Lieutenant Rhodes to Charlott -- this
15 is the same interview we were speaking of a moment ago --
16 "No. Did he eat a whole" -- "How long were you guys eating
17 dinner?"

18 "Answer: Maybe 20 minutes."

19 "Question: And this is like ten
20 minutes -- like ten something, eleven o'clock?"

21 "Answer: Yeah, and this was about 11:40
22 or 10:45."

23 "Lieutenant Rhodes: 10:45.

24 "Answer from Charlott: And it was
25 eleven o'clock by the time we stopped eating."

1 "Lieutenant Rhodes: Is that a normal
2 time for you guys to -- "

3 Charlott answers before he finishes:
4 "No."

5 Were you aware of those questions and
6 answers at the time you signed this affidavit on the morning
7 of July 3rd?

8 A. I was not aware of all that information, no.

9 Q. Do you know of any statement that Charlott
10 actually made to Lieutenant Rhodes or Commander Mascher in
11 which she said that it was unusual for Mr. DeMocker to eat
12 such a small amount at dinner?

13 A. I wouldn't -- I didn't know what would have been
14 talked about during that time.

15 Q. For that matter, are you aware personally of any
16 statement that Charlott made to law enforcement that night to
17 Lieutenant Rhodes or anyone else where she discussed at all
18 how much her father had eaten that night, in any context?

19 A. I haven't reviewed the transcripts, so I don't
20 know if there is a conversation about that.

21 Q. You wouldn't have been part of that conversation
22 with Charlott in any way, would you?

23 A. Correct.

24 Q. You had to rely on other people; is that right?

25 A. Correct.

1 Q. And you did no independent investigation of your
2 own to determine whether the statements were accurate. You
3 just trusted your colleagues to provide you with accurate
4 information; is that right?

5 A. That's correct.

6 Q. Going down to the third paragraph on the second
7 page of the Regular Information Form, "While Steven Carroll
8 DeMocker was on his six-hour bike ride" -- do you see that?

9 A. Yes, I do.

10 Q. Now, the information that you had was that the
11 ride ended about ten o'clock at night; is that right?

12 A. Yeah. Back to his house around ten o'clock at
13 night.

14 Q. Ten o'clock at night.

15 Did Mr. DeMocker tell you when he
16 actually ended the bike ride?

17 A. Throughout the interview, there was approximate
18 times, yes.

19 Q. What time did you tell you?

20 A. Approximately 9:00, I believe.

21 Q. At 9:00; is that right?

22 A. Yeah, and I think it was also stated 9:00 or 9:30.

23 Q. When you signed the affidavit, did you intend the
24 phrase "six-hour bike ride" to include the time spent driving
25 to the ride and driving back from the ride?

1 A. That's how I -- that time period is the entire
2 trip, yes. So it's not just the bike ride.

3 Q. The affidavit, on its face, doesn't say "entire
4 trip," it says "bike ride."

5 A. It says "bike ride," correct.

6 Q. Okay. You would agree that when you signed the
7 affidavit, you knew that he had not been riding his bike for
8 six hours. He had not told you that, had he?

9 A. That's correct.

10 Q. And in fact, he had -- he had said that he had
11 started later than Charlott had said; correct?

12 A. I'm not positive on as far as when Charlott said.

13 Q. Well, you just read a portion of her recorded
14 interview with Lieutenant Rhodes where she said she thought
15 he left the Alpine Meadows location at about 5:30; is that
16 right?

17 A. That's what she said.

18 Q. Mr. DeMocker told you, before you signed this
19 affidavit, that he left about 6:00; correct?

20 A. I don't believe that's correct.

21 Q. What did he tell you?

22 A. He told me that he got home, he thought, sometime
23 around 5:00, and he got out to the trail sometime around
24 6:00.

25 Q. Did he tell you what time he started riding?

1 A. He didn't have an exact, and made a comment he
2 didn't wear a watch.

3 Q. You said just a moment ago, I thought, that your
4 impression was that he thought the ride ended, perhaps, at
5 nine o'clock; correct?

6 A. He said 9:00 once and 9:30.

7 Q. Taking even the later time, the 9:30 time, if he
8 began at 6:00, that's a three-and-a-half-hour bike ride,
9 correct, if he started right at 6:00 when he got out there?

10 A. 6:00 to 9:30, it would be three-and-a-half hours,
11 correct.

12 Q. Or less. If he finished at 9:00 or started after
13 6:00, it would be less than three-and-a-half hours?

14 A. Correct. If he started at 6:00; correct.

15 Q. And in fact, according to Charlott's statements to
16 Lieutenant Rhodes, her father had not been gone for six hours
17 when she first heard from him. He had been gone no more than
18 four-and-a-half hours; correct?

19 A. From 5:30 until approximately 10:00.

20 Q. Okay. Now, the fourth paragraph on the second
21 page of the Regular Information Form discusses in some detail
22 what Mr. DeMocker told you and Sergeant Huante about his bike
23 ride that night; correct?

24 A. Correct.

25 Q. All right. It says, in the first sentence, that

1 Mr. DeMocker told you he went on a bike ride 1800 hours and
2 returned to his vehicle, which was parked off of Love Lane,
3 parenthesis, (Williamson Valley Road), close parenthesis, at
4 about 2200 hours.

5 So what's in the affidavit is that he
6 went for his ride from six o'clock in the evening to about
7 ten o'clock; correct?

8 A. That is what's written.

9 Q. That is not actually accurate, and you knew that
10 at the time you signed this affidavit that he had not said
11 that he returned to his vehicle at 2200 hours; correct?

12 A. No, I should have said he returned -- he got home
13 approximately 2200 hours.

14 Q. So that statement about when he returned to his
15 vehicle is inaccurate.

16 A. Yes, it is inaccurate.

17 Q. And you knew at the time -- you knew, you had
18 other information within your personal knowledge, because you
19 heard from Mr. DeMocker when you signed the affidavit;
20 correct?

21 A. I agree that part of it is incorrect.

22 Q. Now, let's talk about where Mr. DeMocker actually
23 told you his vehicle was parked.

24 Could you look at exhibit -- this is
25 Mr. DeMocker's interview -- I'm sorry. I am just not -- look

1 at the exhibit sheet here for a minute.

2 MR. BUTNER: Judge, while he is doing that, I
3 would ask that the Court in this cross-examination of this
4 witness or examination -- I am not sure what -- take notice
5 of the fact that the entire paragraph there includes the fact
6 that this witness did state that he returned home about 2200
7 hours.

8 MR. SEARS: We will get there, Your Honor.

9 THE COURT: I acknowledge that's what it says.

10 MR. BUTNER: Thank you, Your Honor.

11 BY MR. SEARS:

12 Q. I am looking at Exhibit 144, which is -- you have
13 it now in your hand.

14 Would you look at Pages 45 and 46,
15 please. And I believe this interview is now one being
16 conducted at the sheriff's office.

17 A. Okay.

18 Q. I will let you get the transcript.

19 THE COURT: We are into Chapter 3, so to
20 speak.

21 MR. SEARS: Thank you, Your Honor.

22 THE WITNESS: Do you know which page that
23 starts, as far as the chapters?

24 THE COURT: 34.

25 MR. SEARS: I was not intending to

1 cross-reference to your transcript there. Maybe Mr. Butner
2 can help you.

3 MR. BUTNER: That is what I think it is, is
4 Chapter 3. We are trying to find the page.

5 BY MR. SEARS:

6 Q. I am looking at Exhibit 144, then, Page 45, Line
7 20 -- Line 20, the unidentified male asking four questions.

8 Can you tell, in context, who that would
9 have been?

10 A. Line 20 would be Sergeant Huante.

11 Q. Sergeant Huante says at page 45 of Exhibit 144,
12 Line 20: "Oh, I see. Okay."

13 Mr. DeMocker says: "And it's a great
14 little downhill. And because if you park -- you can't park
15 over -- it's a neighborhood, so you really can't park where
16 people come out of Love Lane. That trail that goes in, you
17 know which one I'm talking about?"

18 Sergeant Huante says: "I" --

19 Mr. DeMocker says: "It goes up" --

20 Sergeant Huante, finishing his sentence
21 says: "-- Granite Mountain" --

22 Mr. DeMocker, on Page 46, Line 1, says:
23 "Yes. Yeah. Trail" --

24 Answer from Mr. DeMocker: "Eventually
25 goes way up."

1 Sergeant Huante: "Okay."

2 That was the beginning of a period in
3 this interview that you were present for at the sheriff's
4 office where Mr. DeMocker actually described for you where he
5 parked; isn't that right?

6 A. That is the time he is describing.

7 Q. And in fact, the statement in the affidavit that
8 we have just reviewed, the fourth paragraph that indicates
9 his vehicle was parked off of Love Lane, parenthesis,
10 (Williamson Valley Road,) isn't accurate, is it?

11 A. Correct. That is inaccurate with the information
12 he shared.

13 Q. He told you that he parked up on Rainmaker; didn't
14 he?

15 A. He did.

16 Q. And Rainmaker is not off of Love Lane. It is in
17 many places parallel to Love Lane; isn't it?

18 A. That's correct.

19 Q. Love Lane comes down and intersects with
20 Williamson Valley Road just north of the intersection of
21 Rainmaker and Williamson Valley Road; isn't that right?

22 A. That's correct.

23 Q. And then both of those roads proceed not in an
24 entirely straight line up in the same direction from
25 Williamson Valley Road, heading west toward Granite Mountain;

1 correct?

2 A. That's correct.

3 Q. So it would be inaccurate to say that Rainmaker is
4 off of Love Lane; correct?

5 A. That is incorrect. Rainmaker is off of Love Lane.

6 Q. Yes.

7 A. That's incorrect.

8 Q. That statement is incorrect -- it's not off of
9 Love Lane; is it?

10 A. That's correct.

11 Q. Now then, in this same paragraph, you say in the
12 affidavit: "Mr. DeMocker said he was biking on a trail, that
13 he eventually connected to the Williamson Valley trailhead."

14 I call your attention to Page 40, Exhibit
15 144, Page 45 -- actually, it may be 46.

16 MR. SEARS: I'm having a little trouble
17 reading this, Your Honor.

18 Q. Okay. It looks like Sergeant Huante -- this
19 is Page 45, Line 5 of Exhibit 144. Sergeant Huante says:
20 "Ride. Okay. All right. So it's a long ways from your
21 house?"

22 Mr. DeMocker says: "Yes. Well, it's a
23 ways."

24 Do you see that?

25 A. Yes, sir.

1 MR. BUTNER: What page are you on?

2 MR. SEARS: 45, Mr. Butner, of Exhibit 144.

3 MR. BUTNER: Okay. And line, please.

4 MR. SEARS: Down to line 7.

5 MR. BUTNER: Thank you.

6 BY MR. SEARS:

7 Q. "Well, it's a ways. It's up on -- I don't know if
8 you know these roads."

9 Sergeant Huante: "Yeah. Indiscernible,
10 pull the horses, people can park and -- exactly -- unload the
11 horses. It's nearby the fire station."

12 Mr. DeMocker: "Oh, no. It's not that
13 one."

14 Sergeant Huante: "Not that one."

15 Mr. DeMocker: "I go running there
16 sometimes, but we don't ride, indiscernible, Rainmaker, and
17 there is a bunch of vacant lots," et cetera.

18 You were present when Mr. DeMocker was
19 talking with Sergeant Huante about that; correct?

20 A. There's some -- yes. Yes, I was present. There
21 is some inaccuracies as far as what is in your transcript
22 versus what's in mine.

23 Q. Why don't you read me those same references from
24 your transcript.

25 A. Okay. Which portion would you like?

1 Q. Why don't you start with "unload your horses," if
2 you can find that. Where Sergeant Huante says: "Unload your
3 horses. It's nearby the fire station."

4 A. Your transcripts say: "Unload their horses. It's
5 nearby the fire station."

6 Q. What does your say?

7 A. "And unload their horses. It's when you're by the
8 fire station."

9 Q. Okay. And then read on from your transcript the
10 next couple of questions and answers.

11 A. "Oh." Then "No, it's not that one."

12 Q. Okay. It was clear to you, wasn't it, Deputy,
13 that Mr. DeMocker was not talking about being at the
14 Williamson Valley Trailhead. The Williamson Valley Trailhead
15 is the one near the fire station; isn't it?

16 A. It's clear to me now when I'm reading it, yes.

17 Q. Okay. Did you know at the time what he was
18 talking about and where he was describing?

19 A. Not at the time.

20 Q. Did Sergeant Huante appear to know what he was
21 talking about?

22 A. He appeared to know.

23 Q. Okay. Did Mr. DeMocker tell you and Sergeant
24 Huante, or either one of you during this interview, that the
25 trail you rode on eventually connects to the Williamson

1 Valley Trailhead?

2 A. I don't know if he used those exact words.

3 Q. Those are the exact words in your affidavit in the
4 fourth paragraph on the second page of the Regular
5 Information Form; aren't they?

6 A. Yes, it is.

7 Q. In fact, Mr. DeMocker told you and Detective
8 Sergeant Huante that he was riding on a portion of the trail
9 heading away from the Williamson Valley Trailhead; correct?

10 A. I don't recall exactly, but I can look and see.

11 Q. Please, take a minute.

12 A. Okay.

13 (Whereupon, the witness reviews a document.)

14 From my transcript, from No. 2, which
15 would have been out on the scene, he comments -- or I
16 comment, "And you were out riding your bike on Granite
17 Mountain," so towards Granite Mountain.

18 Q. Yes. Which is away from the Williamson Valley
19 Trailhead; isn't it?

20 A. It's all connected, but it's a different
21 direction.

22 Q. He didn't tell you that he was riding on a trail
23 that was connected to the trailhead, did he?

24 A. He didn't specifically say that, no.

25 Q. Okay. Your affidavit, though, says Mr. DeMocker

1 said he was biking on a trail that eventually connected to
2 the Williamson Valley Trailhead.

3 He didn't tell you that, did he?

4 A. He said he was biking on a trail, and that trail
5 system connects to the Williamson Valley Trailhead.

6 Q. Let's make sure we're speaking of the same thing.

7 I read this statement as a simple
8 declarative statement. Mr. DeMocker said he was biking on a
9 trail that eventually connected to the Williamson Valley
10 Trailhead.

11 As I read that statement, sir, you are
12 saying, under oath, that Mr. DeMocker told you that the trail
13 that he was biking on connected to the Williamson Valley
14 Trailhead; correct?

15 MR. BUTNER: Objection. It is argumentative,
16 Judge.

17 THE COURT: Sustained.

18 BY ME. SEARS:

19 Q. You have the transcript there.

20 Did Mr. DeMocker tell you that the trail
21 that he was riding on eventually connected to the Williamson
22 Valley Trailhead? Did he use those words?

23 MR. BUTNER: Objection. Asked and answered.

24 THE COURT: Overruled.

25 THE WITNESS: Did he use those words?

1 BY MR. SEARS:

2 Q. Yes.

3 A. No, sir.

4 Q. The next to last paragraph on Page 2 of the
5 Regular Information Form begins, "It was noted that Steven
6 Carroll DeMocker had numerous scratches."

7 Can you find that paragraph?

8 A. On Page 5?

9 Q. It would be the second page of the Regular
10 Information Form. Do you have that?

11 A. Yes, sir.

12 Q. If you would Look at Exhibit 144, then, pages 63
13 and 64.

14 In the affidavit you say, "he" --
15 Mr. DeMocker -- "said he was scratched while on his bike
16 ride. When questioned as to the width of the bike trail, he
17 said that the trail was wide enough for a horse."

18 That's what's in your affidavit; is that
19 right?

20 A. That's correct.

21 Q. Look at Page 63, Line 28, the unidentified male,
22 which I am now beginning to understand may have been Sergeant
23 Huante, Exhibit 144.

24 Do you find that reference?

25 A. I think "unidentified male" is throughout, so I

1 don't know if that's exactly Sergeant Huante.

2 Q. Well, let's just call it the "unidentified male,"
3 then.

4 The unidentified male asked Mr. DeMocker, on
5 tape, "How wide is the trail?"

6 THE COURT: Can you give me the page
7 reference, again.

8 MR. SEARS: Page 63, Line 28, Your Honor, of
9 Exhibit 144, Mr. DeMocker's interview, which I am thinking is
10 at the sheriff's station. I am thinking, but I can't say for
11 certain if that's Sergeant Huante.

12 THE COURT: All right. I am with you. Thank
13 you.

14 MR. SEARS: Thank you.

15 THE WITNESS: (Whereupon, the witness reviews
16 a document.)

17 Sergeant Huante asked, "How wide is the
18 trail?"

19 BY MR. SEARS:

20 Q. Right. And then on the top of the next page on
21 our transcript, Exhibit 144, Mr. DeMocker says: "Well, it
22 depends. It's pretty wide. I mean, it's a very
23 well-established trail."

24 Sergeant Huante says: "I see, because
25 horses go on it, too."

1 Mr. DeMocker: "Horses are on it a lot."

2 Sergeant Huante says: "Okay. It's
3 mainly horses" --

4 Our transcript says "indiscernible,
5 scratches there." That's a question from Sergeant Huante.

6 Mr. DeMocker says: "They are up higher
7 than the base of it where it starts to get" -- and then our
8 transcriptionist couldn't understand the word, and then the
9 discussion turns to scratches.

10 Can you find that same section in your
11 transcript to see if your transcriptionist could understand
12 what Sergeant Huante and Mr. DeMocker were saying?

13 A. I can, through what -- I know the area that we are
14 talking about.

15 Q. Can you? Well, can you find the reference in your
16 transcript to see if it's a better representation of what was
17 said than this?

18 A. They're different.

19 Q. Why don't you read me what you have, and tell us
20 what page you're looking at.

21 A. Page 27.

22 MR. BUTNER: Of which one?

23 THE WITNESS: No. 3.

24 MR. BUTNER: Thank you.

25 THE COURT: The YCSO 3, Page 27.

1 BY MR. SEARS:

2 Q. What does that say, Deputy?

3 THE COURT: Where do you want him to start
4 from, Mr. Sears?

5 BY MR. SEARS:

6 Q. If you could go back to the question from Sergeant
7 Huante, "How wide was the trail," which is at Line 28, on
8 Page 63 in our transcript.

9 A. Okay. I will just go on, and when you are ready
10 for me to stop, ask me to stop.

11 Q. That would be great.

12 A. Sergeant Huante asks: "How wide is the trail?"

13 Mr. DeMocker responds: "It depends.

14 It's pretty -- pretty wide -- um, I mean, it's a very
15 well-established trail."

16 Sergeant Huante: "I see. Because horses
17 go on it, too?"

18 Mr. DeMocker: "Horses are on it a lot."

19 Sergeant Huante: "Okay."

20 Mr. DeMocker: "Mainly horses, you know?"

21 Sergeant Huante: "Did you happen to get
22 those scratches there?"

23 Mr. DeMocker: "Up higher in the basin
24 where it starts to get" --

25 Sergeant Huante: "You've got a lot of

1 scratches. I was watching your legs. You got -- you got
2 there -- you got there, um, there's a" --

3 Mr. DeMocker: "Brushed by something on
4 the left."

5 Q. Okay. So if I am understanding what you are
6 saying, the place where Mr. DeMocker says "they're up
7 higher," your transcript says "they're up higher than the
8 basin of it" -- b-a-s-i-n?

9 A. That's what's written.

10 Q. Okay. So Mr. DeMocker was telling you that the
11 trail was wider in places and narrower in places; correct?

12 A. It appears.

13 Q. And that the scratches came in a place where the
14 trail was narrower; correct?

15 A. It doesn't state "narrower." He doesn't finish
16 his statement, so it's hard to say what he was going to say.

17 Q. Okay. Going to the last page of your Regular
18 Information Form, it says "Detective Brown." You are writing
19 about yourself in the third person here.

20 Did somebody write that for you?

21 A. That was written, yeah. I didn't type any of
22 this.

23 Q. You would have said "I" right there. You would
24 not refer to yourself in the third person.

25 "Detective Brown went to the location

1 where Steven Carroll DeMocker said he parked his vehicle off
2 of Love Lane and was unable to find any vehicle tire
3 impressions that were similar in any way to the vehicle
4 driven by Steven Carroll DeMocker. No bicycle tracks were
5 located."

6 So let me see if I understand. That is
7 not your work product? Somebody else had that put in the
8 affidavit that you signed?

9 A. They typed that information in the affidavit.

10 Q. "They" being Detective Kennedy?

11 A. Correct.

12 Q. Was she the only person that typed this affidavit?

13 A. Yes, sir.

14 Q. Did you provide the information in that paragraph
15 about what you did that morning directly to Detective
16 Kennedy?

17 A. Yes, I did.

18 Q. Okay. Did you tell her that you went to a
19 location off of Love Lane to where Mr. DeMocker said he
20 parked his vehicle?

21 A. Yes, I did.

22 Q. Okay. And you've told us here today that the
23 location where he parked his vehicle that he told you is a
24 location that was not off of Love Lane; correct?

25 A. Correct. Going through the transcripts, that's

1 correct.

2 Q. And you said that you told Detective Kennedy to
3 put in the affidavit that you were unable to find any vehicle
4 tire impressions that were similar in any way to the vehicle
5 driven by Mr. DeMocker; correct?

6 A. That's correct.

7 Q. And no bicycle tracks were located; correct?

8 A. That's correct.

9 Q. Now, you testified at length in a previous hearing
10 in this case about where you went that night. So that I
11 understand it, you told us now, again today, that you were
12 not familiar with any of this area before the morning of
13 July 3, 2008; correct?

14 A. That's correct.

15 Q. And you went with Detective Jaramillo to look for
16 evidence where you thought Mr. DeMocker had told you he had
17 parked; is that right?

18 A. That's correct.

19 Q. And in fact, that where you went was not up on
20 Rainmaker; correct?

21 A. That's correct.

22 Q. You went off of Love Lane, which is, in this
23 particular area, a dirt road; correct?

24 A. I went down the entire Love Lane. It's paved in
25 some portions, and it's dirt in some portions.

1 Q. It is paved, and then it turns into dirt, until it
2 peters out up on the edge of Granite Mountain; correct?

3 A. There are two sections that are dirt.

4 Q. And you were on both of those sections; is that
5 right?

6 A. Yes, sir.

7 Q. Now, you knew from being present for the interview
8 with Mr. DeMocker that that is not where he said he drove his
9 car or he parked his car; isn't that right?

10 A. In the morning, I did not know that.

11 Q. You went out to the scene with Detective Jaramillo
12 before you signed this affidavit; isn't that right?

13 A. Yes, sir.

14 Q. Okay. And to be clear, you were present while
15 Sergeant Huante was interviewing Mr. DeMocker about where
16 Mr. DeMocker said he was and where he parked; correct?

17 A. That's correct.

18 Q. So you had that information; correct?

19 A. I was present during that information.

20 Q. Yeah. You just didn't know exactly where all
21 these places were; isn't that right?

22 A. I didn't have a full understanding of it at that
23 time.

24 Q. Okay. So there is no question that Mr. DeMocker
25 told you that he parked on Rainmaker; correct?

1 A. At that time there was a question. Now I know
2 what was written.

3 Q. We have gone through the transcript. Do you want
4 to go through it again where Mr. DeMocker talks about parking
5 up on Rainmaker?

6 A. Correct. It is very clear in the transcript. I
7 agree.

8 Q. The transcript was of an interview that you
9 participated in. You were standing right there; correct?

10 A. Correct.

11 Q. So, between the time Mr. DeMocker made those
12 statements in your presence about where he was parked and the
13 time that you went up looking for it and the time after that
14 when you signed the affidavit, somehow you became confused?

15 A. No, I was confused during the interview.

16 Q. Did you make any independent effort to resolve
17 this issue at 4:30 that morning when you and Detective
18 Jaramillo went looking for tire tracks?

19 A. During the interview that I had with Mr. DeMocker,
20 I tried to ask questions to try to get a better
21 understanding.

22 Q. Mr. DeMocker actually drew a map, didn't he?

23 A. Yes, sir.

24 Q. On a white board in the room that he was being
25 interviewed in; correct?

1 A. Correct.

2 Q. And photographs were taken of that map; is that
3 correct?

4 A. Correct.

5 Q. Who took those photographs?

6 A. I did.

7 Q. Did you have your camera with you when you and
8 Detective Jaramillo went up trying to find where he had said
9 he had been?

10 A. I didn't take the photographs of that night.

11 Q. The import of this paragraph, with respect to
12 being included in the affidavit for search warrant, was to
13 infer that Mr. DeMocker was not being truthful when he said
14 where he had been; correct?

15 A. The information was to put in there that I didn't
16 find any tire impressions in the area that I looked.

17 Q. To show or infer that Mr. DeMocker was not being
18 truthful with you and Sergeant Huante because you could find
19 no evidence.

20 MR. BUTNER: Objection. Asked and answered
21 and argumentative.

22 THE COURT: Sustained.

23 BY MR. SEARS:

24 Q. The statement on the first paragraph on the last
25 page of the Regular Information Form is inaccurate in this

1 respect, that Mr. DeMocker did not say he parked his vehicle
2 off of Love Lane. First question; correct?

3 A. Please repeat that. I apologize.

4 MR. SEARS: Could I have it read, Your Honor?

5 THE COURT: Would you, please, Roxanne?

6 THE COURT REPORTER: Yes.

7 (Whereupon, the relevant portion
8 of the record was read back.)

9 THE WITNESS: Correct.

10 BY MR. SEARS:

11 Q. And you had told us here today, under oath, again,
12 that Mr. DeMocker had told you, in fact, where he had parked
13 his vehicle; correct? That night?

14 A. He did tell me where he parked the vehicle.

15 Q. And your statement, then, in the first paragraph
16 of the last page of the Regular Information Form that you
17 were unable to find any vehicle tire impressions that were
18 similar -- or bicycle tracks -- was, in fact, based upon you
19 and Detective Jaramillo going to a place that Mr. DeMocker
20 had not told you he had driven; correct? You went to the
21 wrong place.

22 A. I went to the wrong place, as far as for parking,
23 correct.

24 MR. SEARS: Thank you. I have no other
25 questions of Deputy Brown, Your Honor.

1 THE COURT: Mr. Butner.

2 MR. BUTNER: Judge, we are trying to get an
3 exhibit here.

4 CROSS-EXAMINATION

5 BY MR. BUTNER:

6 Q. In this Exhibit 144 of the transcript that was
7 provided by the defense to you, you found that it differed
8 from the transcript that you had concerning this interview;
9 is that correct?

10 A. There is a section that I saw that was different.

11 Q. Let me show you what has been marked as Exhibit
12 151.

13 This is what you called your "Interview
14 No. 4, Steven DeMocker"; is that right?

15 A. That's correct.

16 Q. And you have a copy of that with you that you have
17 been referring to?

18 A. Yes, sir.

19 Q. And how -- there was a significant difference in
20 your transcript from that of the defense; is that correct?

21 A. That's correct.

22 Q. What was that significant difference?

23 MR. BUTNER: Before he answers, I would move
24 for the admission of Exhibit 151.

25 MR. SEARS: Your Honor, the difficulty I have

1 with 151, of which it doesn't have line numbers, and it is
2 difficult -- we are trying to match up as we think we see --

3 THE WITNESS: I found it.

4 MR. SEARS: Your Honor, to the extent that it
5 is just an alternative interpretation of what is on the
6 recording, I have no objection for purposes of this hearing
7 to 151.

8 THE COURT: 151 is admitted for this hearing.

9 MR. SEARS: If there is any question, I think
10 the recording is probably the best evidence. It is two
11 different sets of ears listening to the same words.

12 THE COURT: Thank you.

13 BY MR. BUTNER:

14 Q. The transcript, Exhibit 151 that has now been
15 admitted, you proofread that transcript; is that correct?

16 A. That's correct.

17 Q. And you proofread it, making sure that it was an
18 accurate transcription of the conversation that you had; is
19 that right?

20 A. As accurate as I could hear it.

21 Q. Okay. And you listened to the recording when you
22 did that, too; right?

23 A. Yes, sir.

24 Q. Okay. How does it differ from the defense
25 transcript that you believe is significant?

1 A. Page 76.

2 Q. And line, please, Doug.

3 THE COURT: Exhibit No. 144.

4 MR. BUTNER: The defense transcript.

5 THE WITNESS: Page 76, Line No. 12.

6 THE COURT: Is the part of -- the part that is
7 No. 4 actually begins at Page 72. So we are, like, four
8 pages into it.

9 MR. SEARS: Page 4, maybe.

10 BY MR. BUTNER:

11 Q. And then referring to the page on Exhibit 144 that
12 you are at?

13 A. Page 76.

14 Q. And line?

15 A. No. 12.

16 Q. And then referring to Exhibit 151, what page are
17 you referring to?

18 A. Page 5.

19 Q. And approximately what line on that, or paragraph,
20 I guess?

21 A. It would be the start of the page, the first
22 paragraph.

23 Q. Okay. Tell us what the difference is.

24 A. For No. 144, it states: "It's okay." This is
25 from an unidentified male: "It's okay. I don't,

1 indiscernible, that, indiscernible."

2 On mine, it's myself speaking.

3 Q. Okay. And "on mine," meaning the sheriff's office
4 transcript?

5 A. The sheriff's office transcript.

6 THE COURT: No. 151.

7 BY MR. BUTNER:

8 Q. No. 151; correct?

9 A. Page 5, first paragraph: "That's okay. Um, I
10 don't know where all those places are. That lane where you
11 parked, were there any other vehicles parked out there where
12 you parked?"

13 Q. And who was speaking when you said that, when you
14 just read that part?

15 A. That's myself. I am speaking.

16 Q. And to whom were you speaking?

17 A. Mr. DeMocker.

18 Q. So you were talking about Mr. DeMocker and the
19 lane where he parked?

20 A. Correct.

21 Q. And at that point in time, what lane were you
22 referring to?

23 A. Love Lane.

24 Q. So you were -- would it be fair to state that you
25 were confused at that point in time and thought that

1 Mr. DeMocker had parked on Love Lane?

2 A. That is correct.

3 Q. Now, we heard mention of a map, and we are
4 attempting to get that map right now.

5 When you were talking with Mr. DeMocker,
6 were you going through the map with him, so to speak?

7 A. The map was drawn. It was on a dry-erase board.
8 It was drawn kind of in stages.

9 There was a section of the map that was
10 drawn during discussion he had with Sergeant Huante while I
11 was present, and there was a section of the map that was
12 drawn when I was just speaking with Mr. DeMocker.

13 Q. Okay. And what did you think was depicted on this
14 map?

15 A. Love Lane is depicted. It's in blue in the map.
16 Love Lane is depicted.

17 And then he draws it again -- or drawing
18 it again, and at that time I think I was confused as far as
19 where Rainmaker and Love Lane were.

20 Q. Is Rainmaker labeled on the map?

21 A. There is nothing labeled on the map.

22 Q. Is Love Lane labeled on the map?

23 A. No, sir.

24 Q. Neither one is labeled?

25 A. That's correct.

1 Q. Is that part of what accounted for your confusion?

2 A. It had to do with some of the confusion. I think
3 some of my confusion was just the talks throughout the night
4 of what Rainmaker was and what Love Lane was.

5 Q. So what was your understanding as to where or on
6 what road Mr. DeMocker parked?

7 A. I believe he parked on Love Lane and took the
8 trail from Love Lane.

9 Q. Okay. And in investigating that, what did you do?

10 A. That's -- Detective Jaramillo and I, approximately
11 4:30 in the morning, drove up Williamson Valley Road to Love
12 Lane and tried to go down the roads which matched -- kind of
13 mirrored with the drawing, and looked for an area where the
14 trail was, and to see if we could find out where he parked.

15 Q. And did you find an area that you thought mirrored
16 the drawing?

17 A. Yes, I did.

18 Q. Where were you at?

19 A. At the end of Love Lane.

20 Q. Okay. And what did you do once you got there?

21 A. That section of Love Lane turns to dirt. It's a
22 section that wraps around the hill, kind of in a curving
23 section. There is vacant land up there with property markers
24 with "for sale" property.

25 Q. Had Mr. DeMocker said anything about vacant land

1 up there?

2 A. He advised that he -- in the interview, he stated
3 that he parked up by the vacant land.

4 Q. And was there vacant land on Love Lane that was
5 for sale?

6 A. Yes, sir.

7 Q. Was that part of the confusion on your part?

8 A. Yes.

9 Q. Where is Williamson Valley from Love Lane?
10 Williamson Valley Road, I should say.

11 A. Williamson Valley Road runs north-south. Love
12 Lane is off of Williamson Valley. It runs east-west.

13 Q. How far away is Love Lane from Williamson Valley?

14 A. Love Lane connects into Williamson Valley.

15 Q. Love Lane actually runs into Williamson Valley?

16 A. Yes, sir.

17 Q. Does that trail -- the Love Lane Trail, does that
18 connect with the Williamson Valley Trailhead?

19 A. Yes, it does.

20 Q. How far away is the Williamson Valley Trailhead
21 from where the Love Lane Trail is at, so to speak?

22 A. I don't recall exact -- I believe -- I can check
23 my notes or the report, if you need me to, but I believe it
24 is between a half a mile to eight-tenths of a mile.

25 Q. You went out there and actually went the --

1 followed, to the best of your ability, the route that
2 Mr. DeMocker told you he was on; is that correct?

3 A. That's correct.

4 Q. And would you describe for us what route you took.

5 A. From the actual trail at Love Lane?

6 Q. Right.

7 A. That trail is -- Love Lane goes -- runs east-west.
8 There is a section of Love Lane that heads south. And then
9 Love Lane will continue on, and then wraps up and then goes
10 south.

11 The lower section, the south portion is
12 the start of the trail at Love Lane. I walked that to --
13 which is, I believe, Trail 307 -- walked that to the
14 intersection of Williamson Valley Trail, which is No. 347,
15 and then walked that to the Cayuse Trailhead, which is Trail
16 346.

17 Q. When did you do this?

18 A. I have done it several times.

19 Q. In reference to this case, when was the first time
20 you did it?

21 A. I believe it was July 13, but that might not be
22 accurate. I could check.

23 Q. That night, when you went out to check on where
24 Mr. DeMocker was parking, before you signed the search
25 warrant affidavit, did you attempt to find the trail and get

1 on the trail that you understood Mr. DeMocker was on?

2 A. I attempted to find the trail, yes.

3 Q. Were you able to find it?

4 A. No, I was not.

5 Q. What was the problem, if you could describe it for
6 us?

7 A. When we went up -- well, the section of Love Lane,
8 there is no trail marker anywhere on Love Lane. I learned
9 this later. There is no trail marker at the end of Love Lane
10 for Trail No. 309. It may be Trail No. 309, but it is the
11 Love Lane trail. There is no trail marker for it there.

12 Q. Okay.

13 A. When we went to the end of Love Lane and the dirt
14 road, I thought the trail was at the end of the dirt road.
15 So we drove up and walked up that section of Love Lane and
16 saw no vehicle tracks. And then we didn't go any further.

17 Q. Did you find out ultimately why it was difficult
18 to find the trail for Love Lane?

19 A. It is right there at a neighboring residence. It
20 looks like it is a private trail later on. It's not marked.

21 Q. It is not marked?

22 A. That's correct.

23 Q. And how do you get on this trail?

24 A. It's at the end of the lower section of Love Lane,
25 the dirt section. It is kind of a rock portion, and it's

1 between a residential property, and there is a little well
2 out there, and it starts there.

3 Q. So it goes between two houses?

4 A. Between two properties, yes.

5 Q. Okay. Between two properties.

6 And it's not marked?

7 A. That's correct.

8 Q. And how wide is it at that spot?

9 A. It's a very narrow trail at that spot. I think
10 the dirt portion is only maybe a foot.

11 Q. A foot wide?

12 A. Correct.

13 Q. Not wide enough for a horse to go on?

14 A. Horses go on it, yes. It is wide enough for
15 horses.

16 Q. So you walk between two residential properties,
17 and then where does it go?

18 A. It goes to a dry wash and goes and connects into a
19 trail and connects to 347.

20 MR. BUTNER: Judge, I am hearing the clock.

21 THE COURT: It is noon. So do you want to
22 resume at 1:15 or 1:30?

23 MR. SEARS: 1:30 would work for us.

24 MR. BUTNER: 1:30 I would appreciate, Judge.

25 THE COURT: 1:30 it is.

1

Stand in recess.

2

(Whereupon, a recess was taken at 12:00 p.m.

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to resume at 1:30 p.m. of the same day.)

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NOVEMBER 18, 2009
1:33 P.M.

FRANKS HEARING

APPEARANCES:

FOR THE STATE, MR. JOE BUTNER.

FOR THE DEFENDANT, MR. JOHN SEARS, MR. LARRY
HAMMOND, AND MS. ANN CHAPMAN.

THE COURT: Record reflects the presence of
the defendant, Mr. Sears, Mr. Butner.

Mr. Sears?

MR. SEARS: Your Honor, I neglected to
mention, again today I have a sentencing in Judge Hess's
court at four o'clock today. And based on the circumstances,
I think it is likely to eat most, if not all, of that hour.
So I would ask that I be excused at one minute to 4:00.

THE COURT: We will end at about five to 4:00
to give you enough time to get there.

MR. SEARS: Thank you, Judge.

THE COURT: We were on cross with Mr. Butner.
Deputy Brown is still the stand.

MR. BUTNER: Thank you.

CROSS-EXAMINATION RESUMED

BY MR. BUTNER:

Q. In going through the Regular Information Form in
the exhibits in the search warrant --

THE COURT: The affidavit is 149.

1 MR. BUTNER: Thank you, Judge.

2 Q. In going through the Regular Information Form as
3 part of the affidavit, you were asked some questions about
4 Paragraph No. 2 concerning Deputy Taintor.

5 Did you get to talk directly with Deputy
6 Taintor before you signed the affidavit to obtain the search
7 warrant?

8 A. No, I did not.

9 Q. In Paragraph 2, was it your understanding that
10 Deputy Taintor had entered the residence and discovered the
11 body?

12 A. Yes, it was.

13 Q. And was it your understanding that Deputy Taintor
14 had requested backup after he had done that?

15 A. My understanding was that he arrived on scene and
16 located the body, and then he requested backup after that
17 time. I was not too sure if he had gone in the house or not
18 at that time.

19 Q. You didn't know for sure when he had entered the
20 scene?

21 A. That's correct.

22 Q. You did know that he had entered it at some point
23 in time?

24 A. That's correct.

25 Q. You were provided information that indicated that

1 Deputy Taintor had requested backup after he had entered the
2 residence; is that correct?

3 A. I don't recall if I knew that he had entered
4 before or after requesting backup.

5 Q. Okay. Looking at Paragraph No. 2, what does it
6 say?

7 A. It says: "Deputy Taintor made entry into the
8 residence and located a female object, believed to be
9 Virginia Carol Kennedy, in a bedroom converted into an office
10 area. The female appeared to be deceased and apparently had
11 severe injuries to her head. At this point, Deputy Taintor
12 requested backup to assist in securing the residence at the
13 scene."

14 Q. Did you have any reason to believe that that
15 statement was incorrect?

16 A. No, I did not.

17 Q. Did you believe it to be true when you signed the
18 affidavit?

19 A. Yes, I did.

20 Q. In regard to Paragraph 3, the facts set forth in
21 Paragraph 3, you actually observed those facts; is that
22 correct?

23 A. Yes, I did.

24 Q. And in Paragraph 4, it talks about a blood drop
25 discovered on the sidewalk outside a door that leads from the

1 office area where the victim was located on the exterior of
2 the residence.

3 You actually saw that blood drop; is that
4 correct?

5 A. That's correct.

6 Q. And then were you provided information that
7 deputies had canvassed the area?

8 A. Yes, I was.

9 Q. And discovered those fresh bicycle tire tracks?

10 A. That's correct.

11 Q. Deputies actually secured the trail and the
12 residence at Bridle Path; is that correct?

13 A. That's correct.

14 Q. Did you see them secure the residence?

15 A. I saw the deputies at the residence -- at the
16 residence, yes.

17 Q. Were you able to see them secure the trail?

18 A. No, sir.

19 Q. Do you recall who provided you with information
20 that the trail was secured?

21 A. I believe it was Sergeant Huante.

22 Q. Did you visit that trail?

23 A. Eventually.

24 Q. But not on the day of the homicide?

25 A. Not on the night, no.

1 Q. Okay. Did you visit it the next day?

2 A. Yes, I did.

3 Q. So during the daytime on July the 3rd is when you
4 visited the trail?

5 A. That's correct.

6 Q. Was it secured at that time when you visited it?

7 A. They were processing at that time.

8 Q. So was it secured?

9 A. I believe it was secured.

10 THE COURT: While we are on that point,
11 clarify whether you visited it before or after the affidavit
12 was signed.

13 THE WITNESS: I visited it after the affidavit
14 was signed.

15 THE COURT: Okay. Thank you.

16 MR. BUTNER: Thank you, Judge.

17 Q. You write in the paragraph after that -- I guess,
18 it's one, two, three, four, five -- six -- or I shouldn't say
19 "you" write it, but the paragraph after that, Paragraph 6
20 begins with "During this investigation it was learned";
21 right?

22 A. Correct.

23 Q. You only conducted part of the investigation; is
24 that correct?

25 A. That's correct.

1 Q. Who provided you information that Virginia Carol
2 Kennedy and Steven DeMocker were involved in a lengthy
3 divorce? Do you recall?

4 A. I believe Mr. Knapp, while on the scene. I don't
5 think Charlott used those words, but she indicated they had
6 been through a divorce, and then Mr. DeMocker.

7 Q. And then what?

8 A. Mr. DeMocker.

9 Q. Okay. And who indicated the divorce was finalized
10 in May of 2008? Do you remember?

11 A. I believe Mr. DeMocker. I don't recall if
12 Mr. Knapp or if Charlott told me the date and month.

13 Q. And Mr. DeMocker was the person that told you
14 about the 401-K?

15 A. That's correct.

16 Q. And is he the one that told you that he was
17 ordered to turn over the 401-K valued at approximately
18 \$190,000?

19 A. That's correct.

20 Q. Who interviewed Charlott DeMocker and Jacob
21 Jenesak, to your knowledge?

22 A. I briefly spoke with Charlott on the night of the
23 2nd. I believe Commander Mascher and Lieutenant Rhodes spoke
24 with Charlott, also.

25 Q. Okay. And how about Jacob Jenesak? Who

1 interviewed Jacob Jenesak prior to the time that you signed
2 this warrant?

3 A. Sergeant Huante and Commander Mascher.

4 Q. And during the break, did you go back and review
5 the transcript of the interview conducted by Sergeant Huante?

6 A. During this break?

7 Q. Yes.

8 A. Yes.

9 Q. And is Sergeant Huante the person that provided
10 you the information that Mr. DeMocker had left for his
11 bicycle ride at approximately 1600 hours?

12 A. That's correct.

13 Q. Did you find that information in that interview
14 that Sergeant Huante conducted with Jacob Jenesak?

15 A. That's correct.

16 Q. And is Sergeant Huante the person that provided
17 you with the information that Mr. DeMocker had returned from
18 the bicycle ride at approximately 2200 hours?

19 A. That's correct.

20 Q. Did you find that same information in reviewing
21 the transcript of the interview between Huante and Jacob
22 Jenesak?

23 A. Yes, I did.

24 Q. And I guess going to Page 5 of the Regular
25 Information Form, the third paragraph down from the top where

1 it reads "While Steven Carroll DeMocker was on his six-hour
2 bike ride" -- who was the source of the information that it
3 was a six-hour bike ride rather than a five or a four or even
4 a three-and-a-half?

5 A. That is Sergeant Huante and, again, the bike ride
6 is the whole time being gone.

7 Q. Had you had access to any of these transcripts
8 that we have been talking about in this discussion today
9 prior to the time of you signing that affidavit for the
10 search warrant?

11 A. No, sir.

12 Q. Let me show you what has been marked as Exhibit
13 152.

14 Do you recognize that?

15 A. Yes, I do.

16 Q. What is it?

17 A. That is the drawings that were on the white erase
18 board in our interview room from the morning of the 3rd.

19 Q. Who prepared that drawing?

20 A. This is a series of drawings, it is not just one
21 drawing, but Mr. DeMocker.

22 Q. Okay. And where was it prepared?

23 A. In the interview room, the Prescott office.

24 Q. At the Prescott office of the Yavapai County
25 Sheriff?

1 A. Yes, sir.

2 Q. Okay. Were you present with Mr. DeMocker when
3 that series of drawings was prepared?

4 A. I was.

5 Q. Would you describe for us how this series of
6 drawings came to be prepared.

7 A. This first portion, which is on, I guess, the
8 right side of the picture, is a section that was kind of
9 drawn up as Love Lane off of Williamson Valley. And that was
10 drawn first, during the portion of interview that
11 Mr. DeMocker was talking directly back and forth with
12 Sergeant Huante, and I was present.

13 Q. Okay. Would you hold it up and point to what you
14 just described as the section of Love Lane?

15 A. This is Love Lane.

16 Q. Okay.

17 MR. SEARS: Your Honor, I have a suggestion,
18 so the record is clear. I have a red pen. We can either
19 take my copy or a copy -- I think the record would be clearer
20 if we could start marking some of these things that the
21 witness is pointing to.

22 THE COURT: Is this 152?

23 MR. BUTNER: This is 152, Judge.

24 THE COURT: I don't think that's admitted yet.

25 MR. BUTNER: It is not admitted yet.

1 MR. SEARS: I would stipulate its admission if
2 it would solve that problem.

3 MR. BUTNER: Thank you.

4 THE COURT: 152 is admitted by stipulation,
5 then --

6 MR. BUTNER: I don't want to mark on this. I
7 would rather leave it just as it is, Judge, and we can put
8 another one up there as the "marking" one, so to speak.

9 MR. SEARS: Could we possibly have this marked
10 as 152-A or 153? 152-A may be impossible.

11 THE COURT: We can't do A's and B's anymore.

12 MR. SEARS: 153. And understand that that's
13 the marking one.

14 And may I give Deputy Brown a red pen?

15 THE COURT: I think that would be helpful. It
16 is -- Mr. Sears' copy will be 153.

17 If you could distinguish the two, don't
18 mark on 152, per Mr. Butner's request. Put that aside and
19 use 153 to mark on.

20 MR. BUTNER: Thank you, Judge. Okay.

21 THE COURT: 153 is admitted also, but it may
22 be manipulated and marked on.

23 MR. SEARS: Thank you, Your Honor.

24 BY MR. BUTNER:

25 Q. Okay. Would you mark on Exhibit 153 there. We

1 have a better marker. That's good.

2 THE COURT: Returning Mr. Sears his marker.
3 It will probably show up a little better. Go ahead.

4 BY MR. BUTNER:

5 Q. Would you mark with the red marker what you were
6 just describing to us, and I think -- what did you say it
7 was?

8 A. It's the first -- I believe during the interview,
9 Sergeant Huante asked if he could draw a map of Love Lane or
10 where Love Lane is in reference to Williamson Valley. And
11 this line is indicating Williamson Valley.

12 Q. Williamson Valley is the straight line across the
13 bottom of the picture?

14 A. Correct. The line occurs and stops. That is
15 representing Love Lane.

16 Q. All right. Why don't you just do a broken red
17 line that goes up that?

18 A. Up Love Lane?

19 Q. Up Love Lane.

20 A. (Witness complies.)

21 Q. Okay. And show it to the judge. He's -- okay.

22 Now, what was your understanding as to
23 where Mr. DeMocker was parked?

24 A. My understanding was that he was parked at Love
25 Lane -- at the end of Love Lane.

1 Q. Okay. And would you put a little X where you
2 thought he was parked, based upon your hearing the
3 conversation with Sergeant Huante and also your own
4 conversation. Is that correct?

5 A. That's correct.

6 Q. So where is your X?

7 A. I will X with a circle.

8 Q. Okay. That will be good. Okay.

9 THE COURT: If you need at any time to see
10 this to approach, Mr. Sears, go ahead.

11 MR. SEARS: I am good so far. Thank you, Your
12 Honor.

13 BY MR. BUTNER:

14 Q. So what are those other roads on there on your
15 map?

16 A. I don't recall what came next. Further on during
17 the interview he added to it, and I tried to ask questions
18 about what those were.

19 I believe the kind of wiggly lines up
20 here is the trail which wraps around and goes towards Granite
21 Mountain.

22 And this section was drawn later on when
23 I was asking him -- we brought it up earlier about -- I asked
24 where he was parked, and I was asking about Love Lane, and he
25 drew over here and pointed that he had parked up here.

1 Q. And what did you think he was drawing when he drew
2 that other line?

3 A. I thought this was Love Lane, again.

4 Q. Another outline, so to speak, of Love Lane?

5 A. Right.

6 Q. At any point in time did you think that he had
7 parked on Rainmaker?

8 A. During the interview, I thought Rainmaker -- no, I
9 did not.

10 Q. What did you think Rainmaker was?

11 A. I thought Rainmaker was just the reference to the
12 area where he owned property, and that was just the reason
13 that he knew about the trail on Love Lane.

14 Q. And using that map or the series of drawings, as
15 you've called it, can you tell from the series of drawings
16 where the Williamson Valley Trailhead is?

17 A. It wouldn't be on this series of drawings.

18 Q. And where would it be? And reference that, if
19 that were a map, so to speak.

20 A. It would be further down to the right of this
21 page.

22 Q. And somehow that trail that he was talking about,
23 you found out that that did connect with the Williamson
24 Valley Trailhead?

25 A. It does connect with the Williamson Valley

1 Trailhead.

2 Q. Do you know where this statement, "a trail that
3 eventually connected to the Williamson Valley Trailhead,"
4 came from?

5 A. I think that was just a recollection -- I mean, an
6 understanding -- Sergeant Huante's understanding of the trail
7 system out there and that it connects to Williamson Valley
8 Trailhead.

9 Q. Is Sergeant Huante a mountain bike rider?

10 A. Yes, he is.

11 MR. BUTNER: No further questions of this
12 witness.

13 THE COURT: Mr. Sears.

14 MR. SEARS: Thank you, Your Honor.

15 REDIRECT EXAMINATION

16 BY MR. SEARS:

17 Q. Deputy Brown, going back to the Regular
18 Information Form in this second paragraph on the first page
19 of that portion of the affidavit, you have now said several
20 times that you didn't speak directly with Deputy Taintor
21 about the sequence of events that turns up in your affidavit
22 and that you got that information from other people; is that
23 right?

24 A. That's correct.

25 Q. Now, if I understand what you said earlier today

1 this morning, you said that the affidavit started to be
2 drafted over a period of time, many hours in the early
3 morning hours of July 3rd, leading up to its execution and
4 submission to Judge Markham; is that right?

5 A. That's correct.

6 Q. And at that time, by the time the affidavit was
7 ready to be presented to the judge, the search warrant, you
8 knew that both scenes -- the UBS office and the Alpine
9 Meadows residence -- were secured by law enforcement;
10 correct?

11 A. And there was deputies out at the scenes, yes.

12 Q. And you knew that as a case agent you could
13 arrange to have that level of security continued as long as
14 you needed; correct?

15 You could have that done the rest of the
16 day to take more time to get this search warrant prepared and
17 submitted; correct?

18 A. I knew --

19 Q. You could have had the deputies sit on the
20 residence and the office for a longer period of time than you
21 did. They could have stayed out there for an additional
22 period of time to allow you more time to work on the
23 affidavit; correct?

24 A. I think there is a reasonable amount of time they
25 can stay out there.

1 Q. I am not talking about days. The rest of the
2 morning, for example; correct?

3 A. That's correct.

4 Q. And you knew that Mr. DeMocker, through his
5 attorney, Anna Young, had agreed that he would not -- that he
6 would honor your request and not try to go back to his office
7 or his home while the search warrant team was in place;
8 correct?

9 A. She relayed that information, yes.

10 Q. So there was really no rush, was there, to get the
11 search warrant submitted at a particular time; correct?

12 A. Just to keep on going with things. I mean --

13 Q. Right. But if it took an hour or two or three
14 more hours for you to get it right, you could have taken that
15 time. Nothing was preventing you from doing that, was it?

16 A. We were just proceeding. There was nothing
17 preventing me from taking more time.

18 Q. You could have arranged to contact Deputy Taintor
19 to make sure that that information attributed to him from
20 other people was accurate; correct?

21 A. Could I have contacted Deputy Taintor?

22 Q. Yes.

23 A. I did not contact Deputy Taintor.

24 Q. And you could have contacted any of the other
25 individuals yourself. You could have asked to re-interview

1 Charlott, or Jake, or even Mr. DeMocker, perhaps; correct?

2 A. I could have asked to re-interview them, yes.

3 Q. Now, you also could have asked to listen to the
4 tape recordings made by Commander Mascher and Lieutenant
5 Rhodes and others of their interviews, so that when you were
6 asked to swear to the accuracy of the information, you had
7 the benefit of hearing what they heard; correct?

8 A. I could have re-listened to the interviews? Yes.

9 Q. Yes, and you didn't.

10 A. I did not.

11 Q. And you could have done more investigation -- and
12 we will talk about this in some more detail in a minute
13 here -- but you could have done more investigation to cure
14 your own confusion about where Mr. DeMocker said he parked
15 and where he said he was riding his bicycle that evening;
16 correct?

17 A. I could have, yes, sir.

18 Q. You could have gone out again with Sergeant Huante
19 after the sun came up and said, you know, we can't find where
20 he was, and gone to a different location. You could have
21 done all those things; correct?

22 A. I could have, yes.

23 Q. But you didn't?

24 A. Did not.

25 Q. Now, you said, in response to a question from

1 Mr. Butner here now, that with regard to the information that
2 you got probably from Sergeant Huante about what Deputy
3 Taintor was doing, that you believed it to be true. You
4 believed it to be true because Sergeant Huante told you;
5 correct?

6 A. I believed the information was true.

7 Q. And the sum total of your reason for believing
8 that was it was being told to you by Sergeant Huante, a
9 person you trusted; correct?

10 A. The information about Deputy Taintor was from
11 Sergeant Huante and the information that I learned from
12 dispatch about what occurred.

13 Q. Okay. Talking about specifically the sequence
14 that Mr. Butner went through with you again, about the
15 statement in the affidavit that you now know to be incorrect,
16 which at the time of the affidavit you signed, said Deputy
17 Taintor went into the residence, discovered the body, and
18 called backup. That's what we are talking about. That
19 portion of the first paragraph -- of the second paragraph.

20 A. Okay.

21 Q. Now, what I am saying is you relied upon Sergeant
22 Huante's version of those events simply because he was
23 Sergeant Huante; correct?

24 A. I thought the information that he had was correct,
25 and I am not sure where he got his information.

1 Q. Can you answer my question? It was simply because
2 your sergeant, Sergeant Huante, told you this that you
3 believed it. You --

4 MR. BUTNER: Objection. Asked and answered,
5 and he did answer the question, Judge.

6 THE COURT: Overruled. You can clarify it,
7 Mr. Sears.

8 BY MR. SEARS:

9 Q. You told us you didn't conduct any independent
10 investigation of that circumstance before you signed the
11 affidavit; is that correct?

12 A. That's correct.

13 Q. And you signed the affidavit, saying to the best
14 of your knowledge this was true and correct, simply because
15 it was told to you by a person of superior rank who you
16 trusted; correct?

17 A. Correct.

18 Q. And that would be the same with everything in this
19 affidavit that you told me was either passed to you directly
20 by Sergeant Huante or from other people -- Lieutenant Rhodes,
21 Commander Mascher, for example, through Sergeant Huante. If
22 those people who were superior in rank to you said it was so,
23 you believed it was so; correct?

24 A. Correct.

25 Q. Do you remember any corrections or changes being

1 made at any time in your presence or within your hearing of
2 any portion of this affidavit by anyone else?

3 A. I think the information was kind of going -- I
4 can't recall any specific corrections or how that took place.

5 Q. Did you make any changes or direct that any
6 changes or additions be made to the affidavit before you
7 signed it or after it was presented to you?

8 A. We went through and tried to make things -- I went
9 through it with -- while it was being written and tried to
10 make changes or corrections if it was inaccurate.

11 Q. What changes or corrections or additions do you
12 recall asking to have made on your behalf?

13 A. I just -- what I recall from as far as the
14 information from when I went out to Love Lane, that is
15 specifically coming from me. I don't recall exactly what was
16 being changed or not changed.

17 Q. I didn't understand what you are saying.

18 What you did say about Love Lane just
19 now?

20 A. The information, that is coming directly from me,
21 and I am the one that asked for that information to be put in
22 there.

23 Q. Okay.

24 A. The rest of the information, I don't recall making
25 specific requests for changes or anything.

1 Q. Now, you understand, I am sure from your training
2 and experience, that the purpose of preparing an affidavit is
3 to provide probable cause information to a magistrate to get
4 the magistrate to sign a search warrant to permit you to
5 search the places and for the things that you are asking to
6 search; correct?

7 A. Correct.

8 Q. And so the idea of an affidavit is it's intended
9 to be persuasive. You intend to put things in the affidavit
10 to persuade the judge that there's probable cause; correct?

11 A. I put in information to show the information of
12 probable cause.

13 Q. And you want the judge, of course, when you submit
14 an affidavit, an application for search warrant, to sign the
15 search warrant; correct?

16 A. Correct.

17 Q. Now, moving on in the probable cause affidavit,
18 the Regular Information Form, down to the third paragraph
19 from the bottom of the first page, talking about the 401-K.
20 And when we talked earlier today, I think you agreed with me
21 that the language of the affidavit as it is written, in front
22 of you, suggests that Mr. DeMocker had not yet turned over
23 the 401-K. That is how you would read that; isn't that
24 right?

25 A. The word "has," on its face, appears to be that

1 way. The meaning behind that is, in the divorce, it was to
2 produce the 401-K.

3 Q. To review the process, you didn't have an
4 opportunity and were not asked to explain what you meant in
5 any part of this affidavit to Judge Markham; is that right?

6 A. If he has any questions, he will ask.

7 Q. And he did not; correct?

8 A. He did not ask on that.

9 Q. And you didn't explain anything, so Judge Markham
10 simply had the benefit of reading the plain language of this
11 affidavit; is that correct?

12 A. That's correct.

13 Q. And you would agree with me, would you not, that
14 the word "has," in the context in which it was used in that
15 sentence, implies that Mr. DeMocker had not yet turned over
16 the 401-K to his former wife; correct?

17 A. I would say, reading it on its face, the word
18 "has" would suggest that he would still have to.

19 Q. And you would agree with me, then, that that could
20 create an inference to Judge Markham -- looking at this
21 without the benefit of your explanation of what you really
22 meant -- that you were suggesting that Mr. DeMocker killed
23 Carol Kennedy rather than turn over the \$190,000 from his
24 401-K.

25 A. Excuse me?

1 MR. SEARS: Could that be read, Your Honor?

2 THE COURT: Roxanne.

3 (Whereupon, the relevant portion
4 of the record was read back.)

5 MR. BUTNER: That calls for speculation,
6 Judge. Objection.

7 THE COURT: Sustained.

8 BY MR. SEARS:

9 Q. If you didn't want Judge Markham to speculate that
10 Carol Kennedy was killed by Mr. DeMocker because he didn't
11 want to pay her the \$190,000, placing that statement in your
12 affidavit would have no other purpose; would it?

13 A. That statement was placed in the affidavit as to
14 represent that he -- the talks that he gave the money to her.
15 That is why that statement is in there, reference to the
16 divorce.

17 Q. That statement is in there simply as a statement
18 of fact? It is not intended to persuade Judge Markham to any
19 particular point of view about the evidence in this case and
20 the existence of probable cause?

21 A. No, sir.

22 Q. That statement came from information conveyed
23 directly to you by Mr. DeMocker; is that right?

24 A. Correct. He informed -- yes, correct.

25 Q. Mr. DeMocker gave you all sorts of information

1 about that 401-K; didn't he?

2 A. All sorts?

3 Q. Yes.

4 A. I don't recall all -- exactly all the sorts that
5 he gave me on that.

6 Q. Let's take a look, if we could, at Exhibit 144,
7 Page 22, please.

8 A. I don't have that exhibit.

9 Q. I'm sorry. Here is Exhibit 144, and I've opened
10 to Page 22. And I direct your attention, if I might, to Line
11 19, the unidentified male. I think we previously identified
12 that as Detective Sergeant Huante; correct?

13 A. I believe so. Yes.

14 Q. Now, Detective Huante says at Line 19: "Had she
15 taken out the 410-K [sic] already?

16 "Yeah, the 401-K was given to her on -- I
17 don't know -- I got a confirmation from my 401-K, and it was
18 just a detail of our divorce decree. The 401-K was to go to
19 her.

20 "And how much was that, sir?

21 "The distribution was \$197,000. There
22 would be a bunch of taxes due on that -- like we were
23 estimating 60" -- I'm sorry. We're getting there. I'm
24 sorry, Your Honor.

25 "Like we were estimating 60, and the

1 leftover was all on our divorce decree. That was how we were
2 going to retire some debt."

3 Then Detective Huante is asking questions
4 about taking away cash. Obviously, he's looking to see if
5 perhaps Mr. DeMocker knew if there was a large amount of cash
6 around. There could have been --

7 MR. BUTNER: Judge, I ask that he read the
8 remainder of the lines down to Line 10, because it clarifies
9 what is going on there, and he's taking this out of context.

10 MR. SEARS: Well, I'll be happy to, Your
11 Honor.

12 MR. BUTNER: Thank you.

13 THE COURT: I have it in front of me and I can
14 read it myself, if you just want to let me do that.

15 MR. BUTNER: That would be fine, Judge.

16 THE COURT: It's done. Thank you.

17 BY MR. SEARS:

18 Q. Now, Deputy Brown, Mr. DeMocker then provided you
19 with and Sergeant Huante with a fair amount of information
20 about this 401-K; correct?

21 A. Correct.

22 Q. And it was more than simply the statement that
23 goes into your Regular Information Form in the search warrant
24 affidavit that says he has to turn over 401-K. He explained
25 in some detail the actual amount, that it was more than

1 \$190,000, and he explained what it was for and how it was
2 going to be used, didn't he?

3 A. Yeah, he did.

4 Q. But that doesn't turn up in the affidavit. Just
5 the statement that you sign off on that says, "It was ordered
6 that Steven Carroll DeMocker has to turn over a 401-K valued
7 at \$190,000 to her." That's all that turns up in your
8 affidavit; correct?

9 A. That's correct.

10 Q. Did you make a conscious decision in preparing
11 this portion of the affidavit to limit the information for
12 Judge Markham about the 401-K to simply this information?

13 A. I did not make a conscious decision. It was just
14 that was -- we put that information in the affidavit.

15 Q. You didn't think it was important for Judge
16 Markham to know that the 401-K had been transferred, what it
17 was for, how it was going to be used?

18 A. As far as from the information, that is all we had
19 from Mr. DeMocker. I didn't have any other information about
20 that.

21 MR. BUTNER: Judge, I am going to enter an
22 objection at this time. He is re-opening new areas about
23 this. And if the Court would allow me to clear up some of
24 this, I will withdraw my objection. But he is going into
25 some stuff that was not touched upon before.

1 THE COURT: Objection, that wasn't gone over
2 in cross.

3 MR. SEARS: Oh, my. I think -- well, it's a
4 little confusing about whether I started on direct with this
5 witness. I guess in a sense I did.

6 THE COURT: You did.

7 MR. SEARS: If I am getting redirect now -- I
8 think that he asked on cross, if I am not mistaken, just now,
9 questions about -- generally about the process by which this
10 affidavit was compiled and upon whom he relied. This was an
11 instance, I think, that would be fairly used to rebut that
12 idea, because part of this information came from his own
13 knowledge, and part of it was cobbled together from other
14 sources.

15 I'm done, by the way.

16 THE COURT: Well, to the extent that you want
17 to call it re-opening, I will let you re-open and give
18 Mr. Butner a chance to get out all the information that each
19 of you want to get out for purposes of this motion.

20 MR. SEARS: Thank you. I am done at this
21 point.

22 THE COURT: Before I leave that, then, is
23 there anything else that you think was opened on the redirect
24 that you want to recross on, Mr. Butner?

25 MR. BUTNER: Yes. The information that was

1 provided by Mr. Jenesak to the officers prior to Deputy Brown
2 signing that. There is a clarification on that, too, Judge.
3 I thought that an interview had already been put in evidence
4 about -- that took place between Mr. Jenesak and Commander
5 Mascher, but apparently that is not in evidence.

6 MR. SEARS: I think it is.

7 MR. BUTNER: No, it's Huante's interview
8 that's in evidence. And then there's another -- this is the
9 first of the interviews with Commander Mascher. There's the
10 joint interview with Charlott and Jenesak that is in
11 evidence, but not the separate interview, to my
12 understanding.

13 MR. SEARS: I'm sorry, Your Honor. I thought
14 I asked a couple of times of Deputy Brown having interviews,
15 and I think I remember Mr. Butner asking that, and I thought
16 I knew the answer, and apparently I didn't.

17 THE COURT: Well, I don't mean to interrupt
18 Mr. Sears' redirect, and I will let you have your recross on
19 the issue that you are asking for recross on, Mr. Butner, as
20 opposed to interrupting Mr. Sears' examination, unless you
21 want to defer back to him before you continue.

22 MR. SEARS: I would just like to understand,
23 Your Honor, because we have gotten some of this disclosure so
24 recently. I have in my hand Exhibit 146, which is my
25 exhibit, with my coffee stain on it, that is the -- an

1 interview that we transcribed between an unknown individual
2 and Jacob Jenesak that begins with "So what school do you
3 attend?"

4 MR. BUTNER: That is Huante.

5 THE COURT: It is about a 14-page document.

6 MR. BUTNER: And that is, hence, the
7 confusion, Judge. This one is 21 pages, Bates-stamped 14154
8 through 14174, and apparently it isn't in evidence.

9 MR. SEARS: Do we have more copies?

10 MR. BUTNER: Yes, we have more copies.

11 MR. SEARS: I need a minute to look at that.
12 This may have been -- with that high a Bates number, my guess
13 is that is something off the 39th supplemental disclosure.

14 THE COURT: Do you want me to take a break to
15 do that?

16 MR. SEARS: Could we do that, Your Honor?

17 THE COURT: Yes. In the meantime, we will
18 take a break, and let me know when we come back out of the
19 break if you would want to interrupt at this point or if you
20 want to continue and then finish with what you are doing
21 before we go back to the questions that Mr. Butner wanted to
22 go into.

23 (Brief recess.)

24 THE COURT: We are back in the courtroom, and
25 Mr. DeMocker and Mr. Sears are here on the defense side and

1 Mr. Butner on the State side.

2 Tell me what direction we are going.

3 MR. SEARS: Is this Exhibit 153, this latest?

4 THE CLERK: I just marked 154.

5 MR. BUTNER: 154.

6 MR. SEARS: I would stipulate to the admission
7 of 154, Your Honor.

8 MR. BUTNER: Thank you.

9 THE COURT: And that would be Jacob Jenesak?

10 MR. SEARS: This is an interview with Scott
11 Mascher and Jacob Jenesak on July 3, 2008, at 1:35 a.m.,
12 Bates No. 014154, the starting page.

13 THE COURT: Then 154 is admitted --

14 MR. SEARS: Thank you, Your Honor.

15 THE COURT: -- for this hearing.

16 REDIRECT EXAMINATION CONTINUED

17 BY MR. SEARS:

18 Q. Deputy Brown, let me show you Exhibit 154, and if
19 I understand the sequence of events now, there were actually
20 three separate interviews of Jacob Jenesak; two by Commander
21 Mascher and one by Sergeant Huante, that we know about, and
22 that joint interview by Commander Mascher of Jacob and
23 Charlott DeMocker. So Jacob was interviewed a total of four
24 times, it looks like, on July 3rd.

25 Is that your understanding?

1 A. I don't know.

2 Q. This is all news to you?

3 A. Yeah.

4 Q. Exhibit 154 has been --

5 THE COURT: If I might interpose a question,
6 Mr. Sears and Mr. Butner, whichever chooses to answer, the
7 154 that I just admitted, is that just Mascher's two
8 interviews, one of the interviews, or the combination --

9 MR. SEARS: One, I think, Your Honor. I think
10 it is simply an interview that's Scott Mascher did at 1:35.

11 There is a second interview that Scott
12 Mascher did at 2:33 in the morning.

13 In the intervening time, apparently,
14 Sergeant Huante interviewed Jacob.

15 And there is the joint interview -- I am
16 not sure where that fits in the chronology, because the joint
17 interview by Commander Mascher of Jacob and Charlott.

18 MR. BUTNER: I'm not sure if that is exactly
19 right, Judge. I don't know what is exactly right.

20 THE COURT: In terms of the sequence.

21 MR. BUTNER: Well, we've got two interviews.
22 We can tell, according to the transcript, when they took
23 place by way of the time.

24 MR. SEARS: That is how I differentiate. It's
25 clear they are different interviews.

1 THE COURT: 154 is at --

2 MR. BUTNER: 2:35.

3 MR. SEARS: 1:35.

4 MR. BUTNER: Oh, I'm sorry, at 1:35 a.m.

5 THE COURT: Does the Huante one have a time on
6 it?

7 MR. SEARS: I don't think so.

8 THE COURT: Exhibit 146.

9 MR. SEARS: Doesn't even have his name on it.
10 He is the unidentified male.

11 THE COURT: Maybe you have to go back to the
12 markings back on the tape or whatever.

13 MR. SEARS: Probably.

14 THE COURT: Thank you for the clarification.

15 BY MR. SEARS:

16 Q. But if you would take a look with me, Deputy, at
17 Exhibit 154, and if you could turn to Page 5 of that exhibit,
18 there is a question -- it's the second question on this page
19 from Commander Mascher, who says: "Okay. And when was the
20 next time you had contact with him? I think you had
21 mentioned to me earlier that it had gotten dark and you were
22 getting worried or something."

23 Jacob says: "Right. We had called his
24 cell phone -- Charlott had called his cell phone a couple of
25 times and he didn't answer and so then we called Rene, and

1 she said she hadn't heard from him in awhile, but knew that
2 he was either going to be at the Granite Basin or the Granite
3 Mountain Trail or the trail by the house."

4 And then Commander Mascher says: "Their
5 house, the Hassayampa."

6 Jake says: "The Hassayampa house."

7 Okay. So apparently Jacob is telling
8 Commander Mascher hours before he signed the affidavit that
9 Jacob and Charlott had information from Rene that possibly
10 Steve was out by Granite Mountain; correct?

11 A. That is what it says here.

12 Q. And yet in your affidavit, the Regular Information
13 Form, you say, at the bottom of the first page: "Both
14 Charlott and Jacob said Steven left home about 1600 hours" --
15 we'll talk about that -- "in his vehicle to go on a bike
16 ride."

17 Steven told them he was going for a ride
18 on the Hassayampa trail. They said he didn't return home.

19 And then later on that same second page,
20 you quote Mr. DeMocker -- you indicated that Mr. DeMocker
21 said he went for a ride out by Granite Mountain; correct?

22 A. I'm sorry. I'm not sure what page you are on.

23 MR. BUTNER: I object to the form of the
24 question. I am confused.

25 MR. SEARS: I will ask several questions.

1 THE COURT: Why don't we restart.

2 BY MR. SEARS:

3 Q. First place, talk about the "where Steve rode" is
4 at the end of the first page of the Regular Information Form.
5 At the top of the next page in which you say that Steven told
6 Jake and Charlott that he was going for a ride on the
7 Hassayampa Trail located near the DeMocker residence;
8 correct?

9 A. Correct.

10 Q. And then later on that same second page, you say
11 that Mr. DeMocker said no, he was riding on a trail out
12 Williamson Valley Road near the Bridle Path location;
13 correct?

14 A. Are you talking about the fourth paragraph down?

15 Q. Yes. I put in the part about Bridle Path. I am
16 just trying to differentiate the two places.

17 A. Correct.

18 Q. Do you see the juxtaposition? You have statements
19 attributed to Charlott and Jacob that he was riding near
20 Hassayampa, and statements from Mr. DeMocker that he was
21 riding out near Granite Mountain; correct?

22 A. That's correct.

23 Q. In fact, law enforcement knew at roughly 1:35 in
24 the morning that Jacob was saying that he and Charlott had
25 other information, which was Steve was either going to be out

1 at Granite Mountain or at the trail by his house; correct?

2 A. The information I went over earlier, from what I
3 read or what you read, was that Jacob was told by Miss Gerard
4 that, yes.

5 Q. Okay. Right. And that didn't make it into the
6 affidavit; correct?

7 A. That's correct.

8 Q. Now, if you look with me at the top of that same
9 Page 5, talking about the time -- and we previously
10 established that the statement at the bottom of the first
11 page of the Regular Information Form which says both Charlott
12 and Jacob said Steven left home at four o'clock in the
13 afternoon was contradicted by Charlott's statement to
14 Lieutenant Rhodes that she thought that Mr. DeMocker left at
15 about 5:30; correct?

16 A. We are going off the old transcript that we read
17 earlier?

18 Q. Yes.

19 A. Those would be different; correct.

20 Q. Right. And now, looking at Page 5 of Exhibit 154,
21 Commander Mascher asks Jacob: "Okay. So he left to go on a
22 bike ride. And do you recall your best what time it was?"

23 Jenesak: "I want to say it was about
24 five o'clock."

25 So that statement from Jacob was known to

1 Commander Mascher and presumably should have been or could
2 have been communicated to you, that Jacob said at one point
3 he thought Steve left at five o'clock, not four o'clock;
4 correct?

5 A. Jacob said at five o'clock to commander Mascher;
6 correct.

7 Q. Now, on the next page, Page 6, down at the bottom,
8 Commander Mascher asks Jacob: "Did he say what trail he was
9 on or anything?"

10 Jacob says: "I think it's just a loop."

11 Next page, Page 7: "Oh, okay. I think
12 it's a six-mile loop."

13 That is just Jacob saying he thinks that
14 Steve is on a trail. The question from Commander Mascher was
15 did he say what trail he was on, and Jacob didn't answer that
16 question, did he?

17 A. In this section, he did not.

18 Q. Okay. Now, going back -- let's see, one more
19 question. I ran out of yellow Post-its here. Page 16.

20 First, going back to your affidavit on
21 Page 2 of the Regular Information Form -- we talked about
22 this before -- when asked -- your statement in the affidavit:
23 "When asked about the potential for Steven to be in the
24 Williamson Valley area, Charlott said her father did not go
25 out there since he and her mother divorced."

1 Immediately before that, both Charlott
2 and Jake are quoted as saying "he" -- Steve -- "immediately
3 took a shower, and they all sat down to eat at about 2300
4 hours." They said, "he ate very little, which they both said
5 was unusual."

6 Okay. Do you remember talking about that
7 with me earlier?

8 A. Uh-huh.

9 Q. Looking at the middle of Page 16 of Exhibit 154,
10 Commander Mascher says about Mr. DeMocker: "Did he eat all
11 of his food?"

12 Jacob said: "He said he wasn't very
13 hungry after the bike ride which is -- I mean, from my
14 experience, you know, after a really long bike ride, that is
15 pretty normal not to be very hungry."

16 So prior to the time this affidavit was
17 prepared and prior to the time that you swore under oath to
18 its accuracy, law enforcement, specifically Commander
19 Mascher, had a statement from Jacob which says that it was
20 pretty normal for Mr. DeMocker, in his experience, not to be
21 hungry after a long bike ride; correct?

22 A. That is what is written here, yes.

23 Q. Okay. And that directly contradicts what was
24 written in your affidavit, which is the statement that they,
25 meaning Charlott and Jake, said he ate very little, which

1 they both said was unusual. Jacob didn't say that, did he?

2 A. He didn't say it there. I am not sure if he said
3 it anywhere else.

4 Q. Okay. And in fact, if you look at Charlott's
5 transcript, Charlott's interview, Charlott didn't say
6 anything about what Steve did or didn't eat. We went through
7 that this morning. If you recall the testimony about her
8 saying that it was unusual to be eating that late. That is
9 all she said; wasn't it?

10 A. At that portion, that's all she said, correct.

11 Q. Did she ever again say that it was unusual for him
12 to eat so little?

13 A. I never went through that transcript.

14 Q. But you signed under oath an affidavit that
15 contained that statement; correct?

16 A. Correct.

17 Q. And you wanted the magistrate to be aware of the
18 fact that Mr. DeMocker's daughter and her boyfriend thought
19 he had behaved unusually by eating so little; correct?

20 A. Correct.

21 Q. That would have been after the time of Carol
22 Kennedy's death; correct?

23 A. Correct.

24 Q. Are you aware of any other interviews of Charlott
25 that we haven't seen yet, like these ones that have come

1 forth recently with Jacob?

2 A. It's hard for me. I don't know what you have seen
3 and what you have not seen, so it is difficult.

4 Q. I just have one. I just have the one that's been
5 marked and admitted into evidence, that one transcript of
6 that one interview of Charlott and Lieutenant Rhodes and the
7 joint interview of Charlott and Jake by Commander Mascher.
8 That's all I know about.

9 A. I spoke with her on the night of the 2nd, briefly.

10 Q. Was that recorded?

11 A. Yes, it was.

12 Q. Was that before or after she was interviewed at
13 length by Lieutenant Rhodes?

14 A. That was before.

15 Q. And what did she tell you during that interview?

16 Well, let me put it this way. What in
17 your affidavit that brings us here today comes from that
18 discussion that you had with Charlott?

19 A. I don't believe there is anything in the affidavit
20 that comes from that specifically.

21 Q. Did Charlott speak with you about any of the
22 matters attributed to her in your affidavit?

23 A. Could I have that one more time. I apologize.

24 Q. Did Charlott talk to you about any of the things
25 that later turned up as being attributed to something she

1 said in your affidavit? Did you have discussions with her
2 about any of these topics in your affidavit that involved
3 her?

4 A. I didn't speak with Charlott until -- I mean,
5 after the time we spoke with her on scene. So I guess no,
6 that would be.

7 Q. Because you talked to Charlott before you signed
8 the affidavit?

9 A. Correct.

10 Q. Did Charlott tell you anything different about any
11 of the circumstances that involved her in this affidavit that
12 you signed?

13 A. From what I recall in my interview with Charlott,
14 she briefly mentioned the divorce. And mainly I was asking
15 her about the situation of the house. I didn't go into any
16 other details.

17 Q. Let's talk, if we could for a minute, about these
18 diagrams that Mr. DeMocker drew for you. I think it is
19 Exhibit 153.

20 MR. SEARS: Is that the marked-up copy, Your
21 Honor?

22 THE COURT: Yes.

23 BY MR. SEARS:

24 Q. Okay. For Mr. Butner, you put an X on Exhibit 153
25 where you thought Mr. DeMocker had said he parked; correct?

1 A. That's correct.

2 Q. And would you put a Y in a red circle where you
3 now believe Mr. DeMocker told you that he parked.

4 A. Can I explain that, or do you want me to just put
5 a Y?

6 Q. Just put a Y where you now believe Mr. DeMocker
7 told you he parked.

8 Can you answer that question?

9 A. I have an estimate of where I think he parked.

10 Q. And is it the same place that you put the X inside
11 the circle?

12 A. No, sir.

13 Q. Is it over on the upper left-hand corner of
14 Exhibit 153-A?

15 A. Correct. It would be somewhere in this general
16 vicinity.

17 Q. Okay. Then why don't you put a Y and a red
18 circle, please.

19 MR. BUTNER: Objection. You are asking him to
20 now look in hindsight and figure out where he parked?

21 MR. SEARS: I wouldn't do that.

22 What I am about to do, Your Honor, is to
23 go through Exhibit 151, which I think is the State's
24 transcript of the time during the interview between Detective
25 Brown and Mr. DeMocker where Mr. DeMocker actually tells

1 Deputy Brown where he was parked, and I want to go through
2 that. And I think a good place to start is by having Deputy
3 Brown identify where he now believes Mr. DeMocker was parked.
4 And I think we will be able to show that he knew that.

5 THE COURT: Bingo.

6 MR. SEARS: Thank you.

7 Q. So let's do that Y in the red circle, if you
8 could.

9 A. (Witness complies.)

10 Q. Thank you. That is Exhibit 153-A.

11 Now, do you have Exhibit 151, Deputy?
12 Probably not.

13 Here is Exhibit 151, and this is the
14 proof-read portion of Chapter 4 of the interview with
15 Mr. DeMocker on the morning of July 3rd. And if I could get
16 you to turn to Page 5 of Exhibit 151, please, Deputy.

17 Okay. At the top, Detective D. Brown --
18 that would be you; correct?

19 A. Correct.

20 Q. -- says to Mr. DeMocker: "That's okay. I don't
21 know where all those places are. That lane where you parked,
22 were there any other vehicles out there where you parked?"

23 Mr. DeMocker: "No, that's why I park up
24 there.

25 Now, do you recall when Mr. DeMocker was

1 beginning this conversation with you that he was up again at
2 the white board drawing this second map with you?

3 A. Since I reviewed the video I recall that.

4 Q. You can see that on the video?

5 A. Yes.

6 Q. You say: "Okay."

7 Mr. DeMocker says: "I have been actually
8 kind of tramping up there a little bit, because I would like
9 to build a house again someday, and so it's an area I -- we
10 had to sell that place at Rainmaker, and I like that area."

11 You say: "Okay. Are there any homes on
12 the path going out there on the road, inaudible. What road
13 is this? Is this Rainmaker?"

14 Is that what you said?

15 A. Correct.

16 Q. I thought I heard you say to Mr. Butner just a
17 while ago that you thought Rainmaker was an area not a road.

18 A. That is incorrect.

19 Q. What did you say to Mr. Butner about your
20 knowledge of Rainmaker?

21 A. Rainmaker was the area where he had some property.

22 Q. Okay. You say right here, if I am reading this
23 correctly, Exhibit 151, you say: "What road is this? Is
24 this Rainmaker?" Correct?

25 A. Correct.

1 Q. You are talking about a road; aren't you?

2 A. Correct.

3 Q. Okay. Now, Steve DeMocker says: "Oh, the
4 Rainmaker is here on this. I mean, this isn't really to
5 scale, but it's -- you know, you park up here, you come down,
6 you cut across, uh-huh, and you go up, and you do the trail.
7 It's not really to scale, it's more, you know, because the
8 ridge -- that Rainmaker is up here. The trail goes all the
9 way through here."

10 Now, looking at 153-A or 153, these maps,
11 there is no question, is there, Deputy Brown, that
12 Mr. DeMocker is telling you, as I just read, that he parked
13 up here where you've drawn the Y in the circle, that he rode
14 down Rainmaker, went across to Love Lane, and back up and to
15 begin his ride. That's what he is telling you here, isn't
16 he?

17 A. From my review, that is what he telling me.

18 Q. Thank you. Now, to recap, he has identified for
19 you that he parked on Rainmaker, and you ask him a question,
20 and he says where Rainmaker is. And he shows you on this
21 Exhibit 153, the map of the white board, where Rainmaker is
22 and where he parked; correct?

23 A. Correct.

24 Q. Then you ask him more questions: "Is this where
25 you came in, inaudible?"

1 Mr. DeMocker: "This is all -- this is
2 all neighborhood. This is all houses."

3 He is describing the area between
4 Rainmaker and Love Lane as you go down Rainmaker and across
5 northbound to catch Love Lane; correct?

6 A. I believe he is describing that, yes.

7 Q. And he is pointing to that, and you say: "Oh,
8 they are all houses here?"

9 So he is telling you more information.

10 THE COURT: That is a couple of questions.
11 Can I interject?

12 MR. SEARS: Please.

13 THE COURT: Is he pointing at the photograph
14 or the board, 151, when he is giving you this information?

15 THE WITNESS: When I reviewed it, yes, he is
16 pointing at the board.

17 THE COURT: All right. Thank you. Go ahead.

18 MR. SEARS: Thank you.

19 Q. And you ask him: "And you are parked at the end
20 of that dead end?"

21 And Steve says: "No, up here."

22 And at that point he is pointing right to
23 the area where you've drawn the Y; right?

24 A. Correct.

25 Q. Okay. "This is the trailhead here. While I

1 re-drew it up here, the Rainmaker goes way up here, and I was
2 parked up here. And there aren't really houses up here.
3 There are houses on the way."

4 And you say: "Okay. From 6:30 or so
5 till 9:30, your car was parked about there"; correct?

6 A. Correct.

7 Q. At that point, you are getting information from
8 him about a three-hour bike ride; correct?

9 A. Correct. It's from 6:30 to 9:30, correct.

10 Q. Three hours, not six; correct?

11 A. Correct.

12 Q. And is there any question now, in reviewing this
13 and in reviewing the video of Mr. DeMocker, that Mr. DeMocker
14 had pretty clearly explained to you, at a minimum, where he
15 was parked; correct?

16 A. By reviewing the video? Yes.

17 Q. And yet, you put in your affidavit to be presented
18 to get a search warrant to search my client's house and all
19 of his possessions, you put in the affidavit that
20 Mr. DeMocker said he went for a bike and returned to his
21 vehicle which was parked off of Love Lane. You put that in
22 the affidavit and signed it under oath; correct?

23 A. Yes, sir.

24 Q. And you said at the end of the Regular Information
25 Form, you went to the location where Mr. DeMocker said he

1 parked his vehicle off of Love Lane and was unable to find
2 any vehicle tire impressions that were similar in any way to
3 the vehicle driven by Mr. DeMocker, that no bicycle tracks
4 were located. But you knew that you were in the wrong place;
5 didn't you?

6 A. At that time, I did not know that.

7 Q. Could Mr. DeMocker have been any clearer with you,
8 short of taking you out and showing you where he had been,
9 than in the way he described, by drawing you a map and
10 answering your questions about where he had been?

11 MR. BUTNER: Objection. Argumentative, Judge.

12 THE COURT: Sustained.

13 BY MR. SEARS:

14 Q. Mr. DeMocker was answering your questions when you
15 had questions about where he was and what -- you asked him a
16 series of questions. We just went over them; correct?

17 A. Correct.

18 Q. And he answered all of those questions; correct?

19 A. Correct.

20 Q. And he didn't give you any confusing information;
21 correct?

22 A. I was confused at that time.

23 Q. Did you tell him you were confused and ask him to
24 explain again?

25 A. At that time, I didn't think I was confused.

1 Q. You didn't say anything in your affidavit about
2 being confused or unsure; did you?

3 A. No, I didn't.

4 MR. SEARS: No further questions.

5 THE COURT: Mr. Butner, you wanted to recross
6 on particular issues?

7 MR. BUTNER: Well, we've covered some of them,
8 Judge.

9 THE COURT: If you don't have any, I don't
10 need any.

11 MR. BUTNER: No, I don't have any further
12 questions. Thank you.

13 THE COURT: You may step down, Deputy Brown.
14 Thank you.

15 Mr. Sears, did you want your copies back
16 of these, or are these extras you can afford to provide me?

17 MR. SEARS: You are welcome to have them if
18 they would be of assistance to you. Thank you, Your Honor.

19 THE COURT: Thank you.

20 Did you have another witness that you
21 wish to call?

22 MR. SEARS: No. Mr. Robertson advises that
23 our standard rate per copy, of course, is \$250 an hour. But
24 we will waive that, under the circumstances, Your Honor.

25 No, we have no additional witnesses, Your

1 Honor.

2 THE COURT: Mr. Butner.

3 MR. BUTNER: State has no witnesses, Judge.

4 THE COURT: You are still about an hour ahead
5 of when you need to be downstairs, Mr. Sears. Do you want to
6 make some argument at this point on the evidence I've heard?

7 MR. SEARS: I do, Your Honor.

8 THE COURT: You may proceed.

9 MR. SEARS: Thank you.

10 Your Honor, we have looked at this search
11 warrant affidavit now for well over a year. And we have
12 looked everywhere we could, and today in some places that we
13 didn't know we needed to look, but with the assistance of
14 Mr. Butner we now looked, to understand or at least to try to
15 understand how this affidavit constituted probable cause to
16 search and seize the items enumerated in that.

17 I have argued that a search warrant on
18 its face does not tie Mr. DeMocker's residence or his
19 automobile, his work, to the search. But for purposes of
20 this argument, Your Honor, I really want to focus on what we
21 think is the most important part of the search warrant and
22 what is missing. I believe there are arguments that could be
23 made about that, but I don't want to in any way lessen the
24 arguments I am about to make about computers and the
25 documents, the journals and e-mails that they looked at.

1 In my experience, Your Honor, even in the
2 simplest of routine drug cases, the Yavapai County Sheriff's
3 Office and the Narcotics Task Force has for as long as I can
4 remember included in their search warrant affidavits
5 boilerplate information about the experience and
6 qualifications of the affiant and will always include
7 statements -- albeit, for the most part boilerplate -- that
8 in the experience and training of the affiant, that drug
9 dealers keep their cash near their dope and write things down
10 in journals and keep records on their cell phones, to justify
11 a search warrant that contains boilerplate language like this
12 one does.

13 Absent from this search warrant affidavit
14 is any descriptive evidence of either Detective Brown's
15 experience, training or knowledge, but even more importantly,
16 any suggestion that there is a link between the probable
17 cause affidavit and the request to go through everything of
18 Mr. DeMocker's that possibly could contain documentary or
19 written information. And if you step back and think about
20 this and look at it, the affidavit asks for and the warrant
21 authorizes the search of journals, notes, and e-mails,
22 electronic storage devices, cell phones, digital media --
23 which Detective Brown said were CDs and DVDs -- cameras,
24 video cameras, computers, hard drives, anything that could
25 contain images or electronic data in this case.

1 It is as invasive and as extensive a
2 search warrant, in terms of scope, as you could possibly
3 imagine. And the way in which it played out demonstrates
4 that. That if you look at the return which is in evidence,
5 they started taking iPod music devices, they took computers,
6 they took a BlackBerry box, computer towers, a Garmin GPS
7 device, a lithium battery, a telephone answering machine, and
8 Mr. DeMocker's computer, and a computer belonging to Katie
9 DeMocker, whom I believe they had information was out of the
10 country at the time of these events.

11 Now, from his office, where they knew he
12 was a stockbroker -- they knew from the second they went in
13 there that this was a brokerage firm, that Mr. DeMocker was a
14 principal in that firm, and they took his business computers
15 and information from his office. They ran wild when they had
16 access to this information. If the Fourth Amendment simply
17 said the police get to look at and in anything they want to,
18 once they get a search warrant, in the hopes that they will
19 find something down the road that might constitute admissible
20 evidence against a suspect, then this warrant would be just
21 fine.

22 But we know that the law doesn't permit
23 that. We know that all the jurisprudence related to the
24 Fourth Amendment and related to the warrants, all the Arizona
25 cases always say that the items described must be described

1 with particularity, which they may have done, but there must
2 be probable cause apparent from the face of the affidavit
3 that supports such a serious invasion of expectations of
4 privacy that Mr. DeMocker or any citizen would have in all of
5 these private matters.

6 Once they had these devices, the police
7 then exercised absolutely no caution whatsoever in examining
8 those items, made no effort to determine if there were any
9 privileged matters, even though they knew Mr. DeMocker had
10 just gone through divorce, and even though they suspected
11 they might find information relating to his divorce.

12 At another time, we will bring up matters
13 to Your Honor about serious invasions thereafter of
14 Mr. DeMocker's attorney-client privilege and other applicable
15 privileges.

16 But the real harm that was done in this
17 case was done on the first day, and there was no excuse for
18 it. The police had all the time they needed. It's very
19 clear from the circumstances that they could have taken as
20 much time as they needed to do this right. But what they
21 did, shockingly, was to cobble together a search warrant by
22 committee.

23 And we've now seen, I think, in pretty
24 dramatic ways, Your Honor, the dangers, the Constitutional
25 dangers to Mr. DeMocker that this committee approach to

1 drafting a search warrant have cost. Deputy Brown, being
2 newer to this area, doing his first homicide search warrant,
3 having to rely on sergeants and lieutenants and commanders to
4 be told what to do, was essentially directed to sign an
5 affidavit that was prepared by other people. And the sum
6 total of his knowledge was people who are my superiors whom I
7 have no reason to distrust told me these things, so they must
8 be true.

9 That can't be Constitutional, Your Honor.
10 It can't be appropriate for a person in Detective Brown's
11 position to sign an affidavit based on what other people told
12 him, that we can now see was unreliable, was contradictory,
13 was at best a series of half-truths, that we have pointed out
14 place and place and place in this affidavit where only part
15 of the truth was told, or where something was put in the
16 affidavit that we now know was incorrect.

17 The sum total of that, Your Honor, plus
18 the utter absence of any descriptive language at all
19 suggesting that Detective Brown knows that they would find
20 evidence of the crime alleged in Mr. DeMocker's electronic
21 media and among his personal papers -- in his journals and
22 his e-mails, on his answering machine -- is what is at the
23 heart of our motion.

24 It seems to us, Your Honor, that the
25 police cut corners here, as we think they have throughout

1 large parts of this case. But this is the most striking
2 example to us, because this cuts to the heart of the case
3 against Mr. DeMocker. They quickly determine, within a
4 matter of minutes perhaps, after contacting Mr. DeMocker,
5 that he was their suspect, and they went about getting an
6 uncounseled statement from him, from his daughter, his
7 daughter's boyfriend -- now we know it's four interviews with
8 the daughter's boyfriend -- trying to get information to
9 justify these search warrants, which they then rushed to
10 obtain at a point when they didn't need to rush, and they
11 were reckless and careless in doing that, and presented to
12 the magistrate an affidavit full of innuendo and inferences.

13 It is obvious to us, Your Honor, and we
14 hope it's obvious to the Court, that the purpose of
15 juxtaposing the statements of Charlott and Jacob with the
16 statements of Mr. DeMocker was for the sole purpose of trying
17 to demonstrate that, as police often do, they were able to
18 get inconsistent and contradictory statements about the same
19 events from people by separating them and interviewing them.
20 The truth is that in their desire to do that, they have
21 misrepresented and distorted what Charlott and Jacob said and
22 what Steve DeMocker has said in an effort to make it all the
23 more dramatic.

24 We know, for example, that all the
25 statements about Mr. DeMocker acting strangely, about what

1 time Mr. DeMocker left, about what time he got back, how long
2 he was gone, where he was gone, what the children thought he
3 was doing and where he went, are all half-truths and
4 misstatements, and under Franks should be and can be redacted
5 from this affidavit.

6 We think, also, that when you look at the
7 affidavit as a whole, the idea that it could in any way
8 support this whole scale and full scale charge into
9 Mr. DeMocker's private matters is hard to imagine. It is
10 difficult for us to see how any reasonable magistrate should
11 have, under the circumstances -- Judge Markham or anyone
12 else -- failed to ask questions. Because the boxes that were
13 checked in the search warrant affidavit said that they had
14 probable cause to believe that the requested items were used
15 as a means of committing a public offense.

16 So it seems extremely unlikely that they
17 suspected Carol Kennedy was bludgeoned to death with an iPod
18 or DVD or a digital camera, or that it consists of items or
19 constitutes some evidence which tends to show that a
20 particular person has committed a public offense. That
21 would, in our view, Your Honor, require them to tie
22 Mr. DeMocker in this information to the places they want to
23 look.

24 It is one thing to look in his washing
25 machine for clothing when he tells them that the clothes he

1 was wearing that night are in the washing machine. It is one
2 thing for them to look at his bicycle when he told them he
3 was riding a bicycle. It's even one thing for them to look
4 in his car when he said he was driving his car around.

5 But he didn't say anything to them, and
6 nothing went into the affidavit that suggests even remotely
7 that evidence of the means or evidence showing that
8 Mr. DeMocker committed this offense would be contained in any
9 of these items. And it is clear that what the police wanted
10 to do is what they got to do, which was to get all of this
11 stuff and spend months and months looking at all of it and
12 trying to find from all of it something that they have yet to
13 find, which is evidence that ties Mr. DeMocker to this crime
14 scene.

15 They have found gossip and innuendo and
16 slanderous material and other things contained in these
17 things, but they haven't found what they are looking for.
18 But that didn't seem to stop them from trying at the outset
19 to get into Mr. DeMocker's personal records and paw around,
20 hoping that something would turn up. That is setting the
21 Fourth Amendment meaning on its head, Your Honor.

22 The purpose of the Fourth Amendment is to
23 protect all of us from unreasonable searches and seizures.
24 And the history of the Fourth Amendment tells us why, that in
25 colonial times it was a great problem in this country, and

1 that the British subjects that lived in the colonies were
2 constantly being invaded in their homes and on their persons
3 and being searched without probable cause and without
4 warrant. And the warrant requirement that was written in the
5 Constitution was one of the bedrock principles of liberty
6 that set this country apart from other colonies and set us
7 off on the course that we've followed the last 220-some
8 years.

9 This case -- this case demonstrates what
10 happens if a Court reviewing this doesn't step in and say you
11 can't do that. You can't go from Point A to Point B without
12 a basis to get to Point B. You can't simply say here is a
13 bunch of stuff we think he has, and we would surely like to
14 look at it because we know somehow that it would be very
15 useful. They have to tell the magistrate specifically what
16 it is that they have that causes them to believe that those
17 items -- his personal papers, his e-mails, his computers and
18 everything else contain evidence. They are simply guessing
19 at this point, and guessing never constitutes probable cause.
20 It's the antithesis of probable cause, Your Honor.

21 The purpose of Franks and suppression
22 hearings is to re-write and re-draw this. We could take the
23 time to take a red pen to this affidavit and strike out and
24 redact all of the materially false statements. And the
25 question is whether they were knowingly made or recklessly

1 made. It is difficult to understand, as I sit here today in
2 a capital case, how Detective Brown could sign off on an
3 affidavit and put in basically the one part that involves his
4 own work product, which is the trip up to find this, and
5 write it the way he did, Your Honor, if he didn't want the
6 magistrate to infer from that that Steve DeMocker was lying
7 about where he had been. That is the only purpose for which
8 that paragraph about going up at 4:30 with Detective
9 Jaramillo is in this affidavit. There is no other purpose
10 for that than to convince the magistrate that they caught
11 Mr. DeMocker in a lie, because they fact-checked him, and
12 they went to where he said he was riding, and there weren't
13 tire prints that matched and there weren't bike tracks. It
14 is not good faith when it is so clumsy as to be reckless.

15 Mr. DeMocker could not have been any
16 clearer. We now have the transcript provided by the State,
17 for which we thank them, in which it is obvious that
18 Mr. DeMocker and Detective Brown were engaging in a dialogue
19 while Mr. DeMocker is drawing for them where he was and where
20 he wasn't. And yet, Detective Brown went to the wrong place
21 and then, most troublingly of all, put that in his affidavit
22 without even once suggesting that he was either confused or
23 knew that he was in the wrong place. He put it in there
24 because he wanted the magistrate to believe that
25 Mr. DeMocker was lying, just like they wanted the magistrate

1 to believe Mr. DeMocker was lying about where he had been,
2 how long he had been gone, and that he was behaving oddly,
3 when we know now from this hearing that none of that is true,
4 and law enforcement knew it wasn't true at the time.

5 This search warrant was, when I first saw
6 it, a problem. It has become a bigger problem in my mind,
7 and it remains a huge problem for us today as we try to
8 understand how this warrant could have been granted by the
9 magistrate based on this. And now that we know, after
10 today's hearing, how this warrant was prepared under the
11 circumstances of its preparation and what the police actually
12 knew that either didn't make it into the affidavit at all or
13 went into the affidavit in half-truths or misstatements is
14 stunning to us.

15 And we are 15-and-a-half months
16 downstream in this case. Mr. DeMocker has sat in jail for
17 more than a year now, waiting for this moment, and we are
18 here. And I ask this Court to take all of this into
19 consideration, to ignore this suggestion by the State that
20 they are doing the best they can, that this was done in good
21 faith, that there was some other extraordinary circumstance,
22 or the argument that, in their response, that common sense
23 should guide us in this case and that common sense would tell
24 us that all of the things that they would like to find were
25 in Mr. DeMocker's computers and iPods and phones. That is

1 not what the law is.

2 There is no common sense exception to the
3 Fourth Amendment, Your Honor. The Fourth Amendment says what
4 it says, and it has been the law of this country since the
5 first day of this country and has to remain the law in this
6 country.

7 And this affidavit violates the Fourth
8 Amendment, Your Honor, and the evidence seized --
9 particularly, Your Honor, the evidence related to the
10 computers, that paragraph, and the journals and e-mails must
11 be suppressed from evidence in this case, and the fruits
12 obtained unlawfully by the State suppressed, as well, under
13 the exclusionary rule of law. Thank you.

14 THE COURT: Mr. Butner.

15 MR. BUTNER: Judge, you know, we are here
16 looking at this affidavit, obviously, with hindsight. And I
17 am sure the Court is aware that a presumption exists in favor
18 of the validity of the search warrant. We are to approach
19 this from the point of view that probability, not certainty,
20 is the cornerstone, so to speak, under the Fourth Amendment
21 to review a search warrant.

22 This affidavit does have mistakes in it.
23 There is no question about that. But I also think that the
24 testimony of Detective Brown, now Deputy Brown, was quite
25 clear, that he was doing the best he could at the time with

1 voluminous information and differing interviews to differing
2 officers. So he had several different sets of facts that
3 were put together by a committee, so to speak. And Mr. Sears
4 is correct, it was hobbled together -- or cobbled together,
5 rather. But there is a basis for every one of the facts that
6 is set forth in that affidavit. There is a basis in those
7 interviews, those interview recordings, and those interview
8 transcripts that were provided to the defense early on in
9 this case, and then even recently when we discovered more
10 interviews, not knowing that we had more than two or three
11 and ended up with even four, in some instances. But the long
12 and short of it is that every one of the facts set forth in
13 this affidavit has a reasonable basis to support it.

14 Much has been made of the confusion by
15 Detective Brown in finding out where Mr. DeMocker was parking
16 his car, according to Mr. DeMocker's story. Well, he went so
17 far as to demonstrate his good faith about that by going out
18 to the scene and trying to find where Mr. DeMocker parked his
19 car. It is not his fault that he was confused. In fact, it
20 demonstrates that he was doing the best that he could to
21 investigate the facts presented to him by Mr. DeMocker.

22 And if the Court will note, even in that
23 statement where he talks about -- at the end of the warrant,
24 he said he parked his vehicle off of Love Lane and was unable
25 to find any vehicle tire impressions that were similar in any

1 way to the vehicle driven by Mr. DeMocker, and no bicycle
2 tracks were located. Those are very bald statements of fact,
3 Judge. I would submit that they aren't really persuasive in
4 any exceptional way, but rather they are simple statements of
5 truth that were unearthed by the detective as he is trying to
6 figure out what is going on here.

7 If you start at the beginning, yeah,
8 there is minor confusions in the statements in this warrant,
9 like "At this point Deputy Taintor requested backup to assist
10 in securing the residence and scene." Well, the detective
11 believed that at the time, Judge. Is it is a huge point?
12 No. Not really. The deputy did request backup. It just
13 wasn't exactly at that point. It took place slightly
14 earlier, before the deputy entered the scene and looked at
15 the deceased body of Virginia Carol Kennedy.

16 You notice that actually in about half of
17 the paragraphs, there wasn't anything to say by way of
18 criticism from the defense in regard to this warrant; rather,
19 it was simply accepted as a statement of fact. But when they
20 didn't like what it said, then they attacked the detective.

21 Your Honor, what we have is a situation
22 here where in hindsight, sure, there were some, I would
23 submit, relatively minor mistakes in the affidavit. But
24 overall, we have an accurate picture of a crime scene, we
25 have an accurate picture of information being gathered by

1 multiple officers at various locations in an investigation
2 through the early morning hours.

3 Do we have a rush to get a search
4 warrant? No, not really. We have multiple hours spent on
5 this warrant, and people doing the best they could at the
6 time with what they believed were true facts and true
7 information.

8 Yes, the Court should employ a
9 common-sense view, a common-sense standard, a
10 natural-probability approach to what is permissible to be
11 seized under the terms of this warrant. And in looking at
12 the items requested by the detective as things that consist
13 of some items or constitute some evidence which tends to show
14 that a particular person has committed an offense, a public
15 offense, you go through all of these things and -- for
16 example, photos of the interior and exterior of all locations
17 to be searched. That wasn't questioned by the defense. That
18 wasn't mentioned in the affidavit.

19 And yet common sense is going to
20 indicate, well, yeah, you have a search warrant. Sure, you
21 are going to take some pictures of the scene of the interior
22 and the exterior, of all the locations that you have
23 permission to search. Sure, you are going to do that.

24 In terms of journals, notes, and e-mails,
25 we have evidence in this case that these people were involved

1 in a lengthy, a protracted divorce. We have evidence at that
2 time that there was communication between them -- texting, if
3 you will, and e-mails. Then it's appropriate to look for
4 those kinds of things in electronic storage devices,
5 including cell phones and digital media and so on and so
6 forth.

7 And we also have evidence that cell
8 phones were significant in this case, so it's appropriate to
9 look to seize cell phones as evidence.

10 And then any and all trace evidence. It
11 is appropriate to seize that kind of evidence, too, Judge.

12 The long and short of it is that here we
13 are in hindsight, there's a presumption that that magistrate,
14 Judge Markham, was doing his job in the Justice Court and
15 reviewed the facts set forth in the affidavit in an objective
16 fashion and found that those facts constituted a reasonable
17 basis to issue this search warrant.

18 Your Honor, I think that the Court should
19 deny the motion to suppress, based upon the evidence that has
20 been presented. Thank you.

21 THE COURT: Mr. Sears.

22 MR. SEARS: Your Honor, briefly, Article 2,
23 Section 8 of the Arizona Constitution says that "No person
24 shall be disturbed in his private affairs or his home invaded
25 without authority of law." That codifies a portion of the

1 Fourth Amendment to the United States Constitution, makes it
2 the law of this state, as well as the law of the land.

3 I heard three times, that I counted,
4 Mr. Butner ask you to bless this search warrant because the
5 police were doing the best they could. That is offensive to
6 the Arizona Constitution and United States Constitution. The
7 police simply do not get to do what they want because they
8 are doing the best they can or because they were confused or
9 because they were rushed, or because they cobbled together
10 information. The law remains the law, Your Honor.

11 I did not hear anything from Mr. Butner
12 addressing the principal point we made, which is this search
13 warrant offers no suggestion or hint of scintilla of
14 information to the magistrate as to why probable cause exists
15 to search Mr. DeMocker's journals, notes, e-mails, or
16 electronic storage devices, including all of the things
17 listed in the search warrant and the affidavit.

18 The private affairs at Mr. DeMocker's
19 home could not be more private than those items. His
20 bicycle, his washing machine, his clothing, are things which
21 we have not suggested directly, as Mr. Butner points out, be
22 suppressed, because they bear some reasonable connection to
23 the probable cause affidavit.

24 And we have not suggested that every word
25 in the affidavit is a Franks violation. What we have said is

1 that the affidavit was put together for a purpose. It was
2 put together to persuade the magistrate to a point, to the
3 point that the police had probable cause to believe that
4 Mr. DeMocker had murdered his wife, and that if they are
5 allowed to seize and then search the things that they were
6 asking for, they would find evidence of that offense. That
7 is what the affidavit asks for. That is what the warrant
8 authorized.

9 We have not heard from the State either
10 in their closing remarks or in any of the evidence that has
11 been presented today, anything beyond a suggestion that they
12 are doing the best they can. And common sense would say if
13 people went through a divorce, if you poke around far enough
14 into the private affairs and personal documents and papers
15 and electronic documents and papers of a person, you might
16 find some evidence to tie that fact -- which is just a fact,
17 that the parties were getting a divorce -- to the crime of
18 murder.

19 They have not even made the link in this
20 search warrant affidavit from the fact that they went through
21 a lengthy divorce to somehow that constituting any part of
22 probable cause to believe that Mr. DeMocker committed a
23 crime. If going through a lengthy divorce was in and of
24 itself probable cause to commit a crime, I think a lot of
25 people in Yavapai County, Arizona, would have reason to fear

1 a search of their home if something happened to their spouse.
2 We know that is not true.

3 All of this must be read together, Your
4 Honor. They may have made out a case for probable cause to
5 look for items of physical evidence that Mr. DeMocker gave to
6 them, essentially, in the statements that he was riding a
7 bike, that he was wearing this clothing, that he was driving
8 this automobile during this period of time. We are not
9 disputing that, Your Honor.

10 What we are saying is that this
11 roughhousing through all of Mr. DeMocker's most intimate
12 personal matters with no effort at all to show how, why, or
13 under what circumstances they were entitled to do so is what
14 makes this an unconstitutional search warrant. We ask you to
15 suppress from evidence those items -- those items.

16 So that our request is clear, we simply
17 want the electronic storage device items, the journals,
18 notes, and e-mails seized, we want those items returned to
19 Mr. DeMocker, under the law, and we want their use and the
20 derivative use, under the Exclusionary Rule, suppressed from
21 evidence in this case.

22 I remain disappointed in the way this
23 happened. I wish that I felt better about the police work in
24 this part of the case. I think there are parts of the police
25 work in this case that are extraordinarily diligent and

1 hard-working and the right thing when they look in other
2 areas.

3 But this is the worse part of this case,
4 Your Honor. The way in which the police seized upon
5 Mr. DeMocker as a suspect instantly, put the blinders on,
6 looked nowhere else, rushed into this, got a magistrate to go
7 along for the ride here, and went to town on Mr. DeMocker's
8 personal matters when they had no right to do so under the
9 law.

10 The way in which this case began is the
11 reason I think we are still here, that Mr. DeMocker remains
12 in jail. Today is a day, I think, that we can start to sort
13 this out. And I ask the Court to think about these matters
14 carefully, as I know you will, but to understand that simply
15 saying something is so, even if it's that way by the police,
16 and even if it is that way by a detective with his hand
17 raised, doesn't make it so.

18 And that is what has been done here. And
19 you can't take this collection of half-truths and untruths
20 and misstatements and innuendo and inferences and wire them
21 together and hand them to a magistrate and get a search
22 warrant to go wherever you choose to go. The law limits
23 that, and we need to recognize that, and the police in this
24 case need to understand that.

25 If it cripples their case, if it hobbles

1 their case, if it caused their case to collapse, that is the
2 consequence, that is what the law requires. This is the most
3 fundamental of fundamental principles that we can see in this
4 case. This is the time to begin to right some of the wrongs
5 that were done to Mr. DeMocker. Thank you.

6 THE COURT: I will take this matter under
7 advisement.

8 We have the continuation of the Chronis
9 hearing at nine o'clock tomorrow morning.

10 I had spoken to you about the possibility
11 of having some additional time that you needed on the move
12 from December 15 to December 9. I can still do that. I
13 don't have the majority of the morning on December 9. I have
14 some time, I think, before 9:30, I believe. I have all
15 afternoon and everything in the day after, I think, eleven
16 o'clock. I do have more time available then. I think a
17 half-hour that is currently set for Mr. DeMocker's case. So
18 I can move it to later in the morning, if you think you would
19 rather stay on the 15th.

20 So things to think about before tomorrow.
21 I won't require an answer of you today, since I know you all
22 have to check your schedules.

23 MR. HAMMOND: Judge, excuse me. I think maybe
24 Mr. Sears and I may have missed a part of what you just said
25 because we were speaking to each other. I apologize.

1 Were you saying you have more time on the
2 15th?

3 MR. SEARS: And he is speaking to a deaf
4 person.

5 THE COURT: At the same time. Okay.

6 Let me get on the -- what I have
7 available, I had -- I think I originally had something like
8 8:30 scheduled for Mr. DeMocker on the 15th. You indicated
9 that you need more time than that.

10 On the 15th, I have -- I currently have
11 Mr. DeMocker at 8:30. I also currently have a hearing at
12 9:30 for an hour on a restitution matter. I have a hearing
13 at 10:30 for a settlement conference, that's set for about a
14 half an hour, at this point. The rest of the day is
15 available.

16 You know, if the deaf guy is not going to
17 listen --

18 MR. BUTNER: Well, he is having trouble
19 hearing you, Judge, and he and I were talking about it. I
20 was kind of explaining what were you saying.

21 MR. SEARS: In smaller words than the Court
22 was saying.

23 THE COURT: If the other deaf guy --

24 MR. SEARS: Just leave me out of this loop.

25 THE COURT: If the other hard of hearing guy

1 is explaining to you what was going on, you're all in bad
2 shape.

3 On the 9th, I have a 9:30 to 10:30
4 matter, and I have a 10:30 to eleven o'clock matter. But
5 apart from that, the rest of the day is available. So if you
6 want me to set something at 11:00 or alternatively at one
7 o'clock just for the whole afternoon, I can do that. I don't
8 know how much time you need.

9 MR. SEARS: That is what Mr. Butner was
10 suggesting.

11 MR. HAMMOND: And Judge, let me suggest that
12 we have several people to confer with on our side. Why don't
13 we take the times you have given us, we'll talk to Mr. Butner
14 and our colleagues, and then when we come back tomorrow,
15 maybe we can decide then how to allocate the time.

16 THE COURT: Sure. That was what I was
17 proposing.

18 MR. SEARS: This is not in lieu of any time on
19 the 9th, is it, Your Honor?

20 THE COURT: I have the afternoon of the 9th.
21 Most of the morning is taken up by other things already. And
22 I have the afternoon of the 15th, but a good portion of the
23 15th is taken up with other cases.

24 MR. SEARS: So if we were tell you tomorrow
25 that we would like to take those two afternoons, the 9th and

1 the 15th, right now that is open for you?

2 THE COURT: As of the moment.

3 MR. SEARS: Thank you, Your Honor.

4 THE COURT: Okay. Stand in recess.

5 (Whereupon, these proceedings were concluded.)

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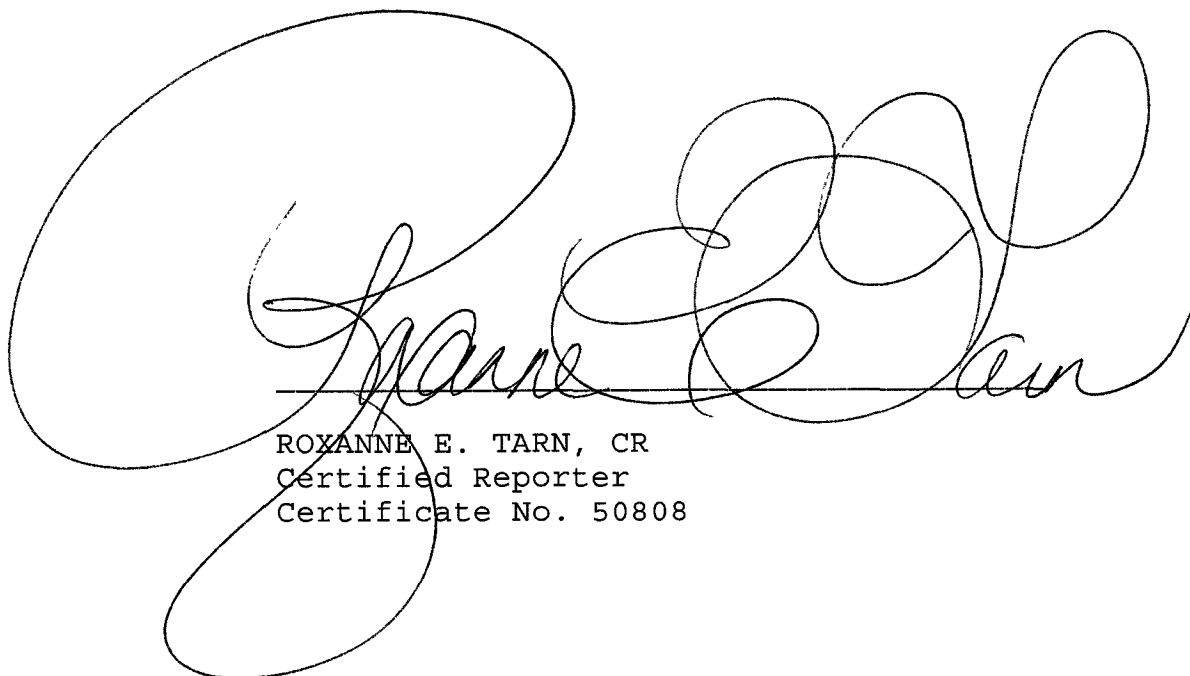
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C E R T I F I C A T E

I, ROXANNE E. TARN, CR, a Certified Reporter
in the State of Arizona, do hereby certify that the foregoing
pages 1 - 178 constitute a full, true, and accurate
transcript of the proceedings had in the foregoing matter,
all done to the best of my skill and ability.

SIGNED and dated this 8th day of January,
2010.



ROXANNE E. TARN, CR
Certified Reporter
Certificate No. 50808